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# Supreme Court of the United States

OCTOBER TERM, 1929.

No. [redacted] 11

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JUNIUS C. KLEIN, - - - - - - - Appellant,

*vs.*

BOARD OF TAX SUPERVISORS OF JEFFERSON COUNTY, KENTUCKY, - - - - - - Appellee.

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## BRIEF FOR APPELLEE.

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# Supreme Court of the United States

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**No. 442.**

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JUNIUS C. KLEIN, - - - - - - - *Appellant,*

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# Supreme Court of the United States

OCTOBER TERM, 1929.

**No. 442.**

---

JUNIUS C. KLEIN, - - - - - - - *Appellant,*

*vs.*

BOARD OF TAX SUPERVISORS OF JEFFERSON COUNTY, KENTUCKY, - - - - - *Appellee.*

---

## BRIEF FOR APPELLEE.

---

*May it please the Court:*

### STATEMENT.

The present Constitution of Kentucky was adopted by a Constitutional Convention in 1891 and was thereafter submitted to and ratified by an overwhelming majority of the voters of Kentucky.

Section 171 of this Constitution originally contained the following sentences:

> "* * * Taxes shall be levied and collected for public purposes only. They shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws."

The insertion of the foregoing sentences in Section 171 of our State Constitution was vigorously opposed by the corporate and monied interests of Kentucky in the Constitutional Convention. When the Constitution was submitted to a vote of the people this interest sought to prevent its ratification, but the experience of the people under the old 1849 Constitution of Kentucky in having taxes pyramided upon real estate and tangible personal property while intangible personal property was escaping taxation, caused them to adopt the present Constitution of Kentucky by an overwhelming majority.

However, this organized interest was strong enough in every general assembly of Kentucky which met after the adoption of the present Constitution to prevent the Legislature from adopting any effective coercive statute that would force those holding intangible personal property to disclose to the assessing department of our State government their holdings of intangible personal property, and by perjury intangible personal property, to a very large extent, escaped taxation in the State of Kentucky from 1891 until the Legislature of Kentucky at its 1914 session, becoming desperate, submitted to the voters of Kentucky an amendment to Section 171 of the present Constitution of Kentucky, which amendment, among other things, contained the following sentences:

> "* * * Taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the *same class* subject to tax-

ation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws.

"The general assembly shall have power to *divide property into classes* and to determine *what class or classes of property shall be subject to local taxation.* Bonds of the state and of counties, municipalities, taxing and school districts shall not be subject to taxation."

This amendment was ratified by the people at the November, 1915, election.

By common consent the 1916 session of the General Assembly omitted legislation upon taxation except for the levying of State taxes necessary to pay the running expenses of the State government, and on February 3, 1917, Governor A. O. Stanley called a special session of the General Assembly of the Commonwealth of Kentucky and by his proclamation limited their activities to the reformation of the taxing system of Kentucky. That Legislature, by Section 6 of Chapter 11 of the Acts of the 1917 Special Session (Section 4019a-12, Kentucky Statutes, 1922 edition), provided the first effective and coercive measure placed on the statute books of Kentucky after the adoption of the present Constitution, by which taxpayers were forced to reveal to the assessing authorities the amount and value of their intangible personal property. But, realizing the wholesale perjury that had been practiced by the owners of intangible personal property in the State of Kentucky in the past, the Legislature attached to the section above mentioned a provision, the purposes of which

were to give an *immunity bath* to the *tax dodgers of Kentucky* who had heretofore refused to reveal to the assessing authorities their holdings of intangible personal property. This provision is in words and figures as follows, to-wit:

> "Provided, further, that after September 1st, 1917, no action shall be commenced nor proceeding taken on behalf of the State or any county, city, town, or taxing district to assess for taxation for any period prior to September 1st, 1917, any personal property described in this section required to be listed for taxation which had theretofore been omitted or which may be claimed to have been omitted, if such property has been so listed for taxation as of September 1st, 1917; nor shall any pending action, prosecution, or proceeding be amended so as to include any such personal property listed as of said date."

The fixing of a penalty equal to 100% of the value of all property that the taxpayers failed to disclose to the assessing officers by Section 6 above mentioned, and the granting of the immunity bath to past tax dodging, produced marvelous results in the taxing system of Kentucky. In 1917 bank deposits reported for taxation in Kentucky were $11,177,196. In 1918 they were $179,143,180. In 1917 intangibles were $68,750,880, while in 1918 the intangibles were $246,348,379. In 1928 bank deposits were $360,214,474 and intangible personal property $495,506,610. (See 11th Annual Report Kentucky State Tax Commission, 1928, Table

No. 3, page 82, copied into Appendix hereto, on page 106.)

Another factor which assisted in bringing to light the existence of this immense amount of intangible property in the hands of the taxpayers which had been escaping taxation was the fact that *the 1917 General Assembly of Kentucky made intangible property the pet of tax legislation.* Under the amendment to Section 171 of our Constitution, the General Assembly was given the power to divide property into classes and to determine the class that should be subject to local taxation; and under this power intangible property was classified and exempted from all local taxation. This simply means that intangible property pays a tax of 50 cents upon each $100 of valuation to the State only. But the lawyer who owns a $1,000 library, who resides and practices his profession in the City of Louisville, Kentucky, is not only required to pay the State the 50 cents on each $100 valuation of his library; but likewise he pays 50 cents to his county; and $2.05 as a municipal tax to the City of Louisville.

Thus, the owner of intangible personal property in the City of Louisville in 1925 paid to the State of Kentucky 50 cents, whereas the lawyer paid on each $100 valuation of his library not only the 50 cents tax that the owner of intangible personal property paid, but in addition thereto 50 cents to the county, and $2.05 to the municipality, making a total of $3.05, or $2.55 more on each $100 valuation than is required of the owner of intangible personal property. In addition to this,

the lawyer is required to pay to his city a $25.00 professional tax.

This discriminatory burden that is laid upon the lawyer's library is also laid upon the humble cot, chair, baby buggy, cooking stove, coal shed, and all other tangible property that is owned by the humble laborer who pours the melted iron in making the products of the Standard Sanitary Manufacturing Company; while the holder of the stock, which some years pays as much as 25% in dividends, pays only to the Commonwealth of Kentucky 50 cents on the $100 in taxation upon this valuable dividend-paying stock, and nothing for the support of schools, the county or city government.

If the appellant in this case were actually forced to pay double taxation upon every dollar's worth of stock owned by him, he would then be paying for the support of his State, county and municipal government, $2.05 per hundred less on his valuable stock than is being contributed by the laborer in his factory on his tangible personal property.

We have tried in the foregoing statement to call things by their right name, conscious of the fact that "if things are called by their right name Caesar himself would be ashamed of fame." We are also conscious of the fact that under Section 174 of the present Constitution as originally adopted, to pay the tax on an honest assessment upon low dividend paying securities was practically equal to confiscation; but under that section as amended the owners of this type of securities receive more consideration and more par-

tiality—both from the Legislature and the Courts—than any other taxpayers in Kentucky.

The assault on the law as it now exists cannot be prompted by a desire for fair and impartial taxation, but with a hope of escaping all taxation for the support of State, county and municipal governments. And yet, we realize that if Section 4088, Kentucky Statutes, were in contravention of either the "due process" or the "equal protection" clauses of the 14th Amendment it would be the duty of this Honorable Court to nullify that section of our State Statute.

The appellant in his assignments of error designated six reasons why this Honorable Court should reverse the Kentucky Court of Appeals. In his 6th error he complains that Section 4088 of the Kentucky Statutes is in contravention to Sections 170, 171 and 172 of the present Constitution of Kentucky. That question was passed upon by the Court of Appeals, and its construction of the statute under those sections of our State Constitution was adverse to his contention and is binding upon him and this Honorable Court.

In the case of Caroline M. Forsythe v. City of Hammond, *et al.*, 166 U. S. 504, 41 L. Ed. 1095, this Honorable Court, in speaking through Mr. Justice Brewer, said:

> "The construction by the courts of a State of its Constitution and statutes is, as a general rule, binding on the Federal Courts. We may think that the Supreme Court of a State has misconstrued its Constitution or its statutes, but we are

not at liberty to therefore set aside its judgments. That Court is the final arbiter as to such questions. * * *."

With Error No. 6 thus eliminated under the foregoing ruling of this Court, we are confronted with five assignments of error which can be reduced to two:

First: The Tax Board of Jefferson County "intentionally, habitually and deliberately assessed appellant's stock at 100% of its value while intentionally, habitually and deliberately assessing other property at 70% of its fair cash value."

Second: That Section 4088 of the Kentucky Statutes is invalid under the 14th Amendment because it permits double taxation under the theory that the share of stock in the hands of the shareholder represents only an aliquot part of the property owned by the corporation, and since the corporation pays taxes upon twenty-five per cent of all of its property to the State of Kentucky, at least twenty-five per cent of the corporate property has been taxed twice when the full value of the share of stock is taxed.

We think that the foregoing is a fair statement of appellant's complaint under his assignments of error Nos. 1, 2, 3, 4 and 5.

So far as possible we shall use the same headings as used by the appellant in his brief.

## ARGUMENT.

### Alleged Discriminatory Assessment.

(1) Since appellant in his excellent brief first discusses the "intentional, habitual and deliberate" discrimination in the assessment of his stock as compared with other property in Jefferson County, we wish to call this Court's attention to the fact that he offers no testimony concerning the assessment of his stock for any year except 1925. Neither does his stipulation mention any other year. The testimony of Ben Marshall, Secretary of the Kentucky State Tax Commission, deals with taxation for the year 1925 and no other year, and the exhibit he files disclosing the valuation of real estate for taxation purposes as it relates to the sale value of real estate in Kentucky, based upon transfers of real estate made between July 1, 1923, and June 30, 1924, the assessment for 1925 being based upon a valuation of property in Kentucky fixed as of date July 1, 1924.

In the case of Keokuk and Hamilton Bridge Co. v. Fred Salm, Jr., *et al.*, 258 U. S. 122, 66 L. Ed. 496, Mr. Justice Brandeis, in speaking for this Court, said:

> "Since the appellant asserts a claim arising under the Federal Constitution, the district court had jurisdiction although there was no diversity of citizenship. Discrimination in taxation, effected by systematic inequality of assessment, may violate the 14th Amendment. Greene v. Louisville & Interurban R. Co., 244 U. S. 499, 502, 61 L. Ed.

1280, 1283, 37 Sup. Ct. Rep. 673, Ann. Cas. 1917E 88. * * *."

In the Greene case above mentioned by Mr. Justice Brandeis, this Court, after referring to the case of Cummins v. Merchants National Bank, 101 U. S. 153, 25 L. Ed. 903, said:

> "* * * This Court held (page 157) that 'when a rule or system of valuation is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the State Constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, that equity may properly interfere to restrain the operation of this unconstitutional exercise of power;' and that this being the case made by the bill and being supported by the evidence, while the statute could not be declared unconstitutional, the discriminatory rule must be held void and the injustice produced under it remedied so far as the judicial power could give remedy."

A single valuation or a single assessment that is discriminatory would not disclose a rule or system of valuation.

Again, we think that before this rule could be applied in the instant case it would be necessary for the appellant by evidence to disclose to our Court of Appeals and to this Honorable Court a discrimination in assessment and valuation of and against appellant's stock and in favor of other property in that class. Real

estate does not belong to the same class of property as intangible personal property. The valuation of real estate was the only property appellant undertook to compare with the valuation of his stock. Real estate is placed in a class by itself. It is subject to State taxation, county taxation, municipal taxation, school taxation and to district taxation, while intangible personal property constitutes a separate, distinct class of property for purposes of taxation and is subject to State taxation only. In order to make a case of discrimination in assessment, appellant would have to show a systematic over-valuation of his stock with a systematic under-valuation of some other stock or some other type of security which is included in the class of intangible property in which his stock is assessed and taxed.

In the case of Samuel B. Raymond, County Treasurer of Cook Co., Ill., etc., v. The Chicago Union Traction Co., 207 U. S. 19, 52 L. Ed., 78, this Honorable Court, in speaking through Mr. Justice Peckham, said:

> "* * * it is made entirely clear that the board of equalization did not equalize the assessments in the cases of these corporations, the effect of which was that they were levied upon a different principle or followed a different method from that adopted in the case of other like corporations whose property the board had assessed for the same year. It was not the mere action of individuals, but, under the facts herein detailed, it was the action of the State, through the board. There is here no contention of illegality simply

> because of assessing the franchises of these corporations at a different rate from tangible property in the State, *which the State might do.* (Coulter v. Louisville & Nashville R. R. Co., 196 U. S. 599, 49 L. Ed. 615, 25 Sup. Ct. Rep. 342), but it is asserted that the board assessed the franchises and other property of these companies at a different rate and by a different method from that which had been employed by the board for other corporations of the same class for that year. * * *."

We think that 6th Ruling Case Law, p. 375, Section 370, very succinctly states the rule applicable in cases similar to the instant case, as follows:

> "* * * The mere fact that legislation is based on a classification and is made to apply to certain persons, and not to others, does not affect its validity, if it be so made that all persons subject to its terms are treated alike under like circumstances and conditions. Legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the prohibition of the 14th Amendment. While it is necessary that the law affect alike all persons in the same class and under similar conditions, so long as a law operates alike on all persons and property similarly situated, it is not subject to the objections of special or class legislation, nor is it in violation of the federal guarantee as to equal protection of the laws. While classification is proper, there must always be uniformity within the class. If persons under the same circumstances

> and conditions are treated differently, there is arbitrary discrimination and not classification."

Appellant does not undertake to show that any other person or corporation who owned stock or other intangibles subject to 1925 taxation in the same class to which the stock of the Standard Sanitary Manufacturing Company belonged, which was treated by under-valuation differently or more favorably in its assessment than was the stock of appellant, and unless such a disclosure is made in appellant's stipulation which is accepted as evidence, or in the testimony of Ben Marshall, he fails to establish his case of discriminating assessment and in this the burden is upon him.

This rule is made clear in the case of Corporation Commission of the State of Oklahoma, etc., v. William Lowe, etc., —— U. S. ——, 74 L. Ed. ——, 50 Sup. Ct. Rep. 397, in which Mr. Chief Justice Hughes, in speaking for this Court, said:

> "It was incumbent upon the appellee in invoking the protection of the 14th Amendment to show with convincing clarity that the law of the State created against him the discrimination of which he complained. An infraction of the constitutional provision is not to be assumed. On the contrary, it is to be presumed that the State in enforcing its local policies will conform its requirements to the Federal guaranties. Doubts on this point are to be resolved in favor of, and not against, the State. * * *."

## A.

### EQUALIZATION.

On page 14 of appellant's brief he states:

> "Confessedly appellant's stock was assessed at 100%—appellant claims at very much more—while real estate in Jefferson County was assessed at 69.9%, and real estate in all the counties in Kentucky on an average of 65 or 70%, so that appellant was denied the equal protection of the laws to the extent of 30%, or more.
>
> "The figures just given are sustained by the testimony of Ben Marshall, secretary of the State Tax Commission (R. 29), and the case is brought within the principle of Louisville & Interurban R. Co. v. Greene, 244 U. S. 499."

The error made by appellant in the foregoing statement is his assumption that the case at bar is within the purview of the principles enunciated in the case of Louisville & Interurban R. Co. v. Greene, *supra*. An examination of this case will disclose the fact that the Louisville & Interurban R. Co. enjoined the members of the State Board of Valuation and Assessment from placing into operation an assessment made upon its franchise for the year 1915, under Section 4077, Kentucky Statutes, and succeeding sections of the State statutes upon the grounds of discrimination in fixing its valuation. This assessment was made, of course, under Section 171 of our present Constitution, before the amendment thereto was submitted to the people by

the Legislature for ratification at the November, 1915, regular election. At that time Section 171 of the Constitution of Kentucky required that "taxes shall be levied and collected for public purposes only. They shall be *uniform upon all property subject to taxation* and within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws." Under the foregoing section of the State Constitution and statutes, the Louisville & Interurban R. Co. alleged that the State Board of Valuation and Assessment was discriminating against it, in that said Board had fixed the value of said franchise at 75% of its market value, while other taxable property in general was assessed "systematically, habitually and intentionally" at not more than 52% of its actual value, and that this systematic, habitual and intentional method of assessing the value of the railroad and the value of other property generally in the State was a violation of the equal protection and due process clauses of the 14th Amendment to the Federal Constitution. This petition set forth the above mentioned sections of our State Constitution and statutes that were in force at that time which required equal treatment of all property in Kentucky in matters of assessment and taxation. The petition disclosed under those laws an unquestioned discrimination in fixing the values of railroad property as compared with the valuation fixed on other property in the State for the purpose of taxation.

Under the Constitution and the statutes of Kentucky at that time, taxing authorities were prohibited

from classifying property or making any discrimination in favor of any class of property in the State of Kentucky.

In discussing this proposition of the discrimination in the Greene case, Mr. Justice Pitney, in speaking for this Court, said:

> "Is discriminatory taxation, contravening the express requirements of the State Constitution, beyond redress in the courts of the United States, their jurisdiction being properly invoked, when the discrimination results from divergent action by different assessing boards whose assessments are not subject to any process of equalization established by the State, and where the diverse results are the outcome, not, indeed, of any express agreement among the officials concerned, but of intentional, systematic, and persistent undervaluation by one body of officials, presumably known to and ignored by the other body, so that in effect the two bodies act in concert? In our opinion, the answer must be in the negative."

The only similarity between the case at bar and the case of Greene v. Louisville & Interurban R. Co., *supra*, is the fact that in 1915 the Board of Valuation and Assessment not only fixed the valuation of railroad franchises in Kentucky but equalized those railroad franchises with each other; while real estate and other property was assessed by the county tax assessor and their values equalized by the county board of tax supervisors in each county, whereas at the present time intangible personal property is equalized by the State

Tax Commission of Kentucky and real estate is assessed by a county tax commissioner and equalized by the board of tax supervisors of the county.

Under the Constitution and statutes of Kentucky as they existed in 1915, taxing authorities in Kentucky were required to give equality or uniformity of treatment as to levy and assessment to all property in the State of Kentucky, and under that Constitution and statutes, as they then existed, this Honorable Court said that when the State Board of Valuation and Assessment, presumably knowing that the assessor and board of tax supervisors of the counties were habitually and systematically fixing the land at 52% of its actual value, and the Board of Assessment and Valuation was at the same time fixing the value of railroad franchises at 75% of their actual value, the resulting discrimination by the action of the State board and the county boards against the property of the railroad constituted a violation of the due process and equal protection clauses of the 14th Amendment to the Federal Constitution.

Under the Constitution and statutes of Kentucky, as they existed in 1915, railroad franchises were subject to the same levy for State taxation to which all other property in Kentucky was subject. It was also subject to a levy for county, municipal, school and district taxation, and under each of these levying authorities the railroad was required to pay 23% more tax under this valuation than was required to be paid on other property under the same levy.

Under the Constitution and statutes of Kentucky, as they existed in 1925 and exist today, uniformity has been abolished, classification authorized and intangible personal property has been placed in a class by itself and is now made subject to State taxation only; whereas real estate is not only taxed for State purposes but is also taxed for county, municipal, school and other taxing district purposes. So, instead of intangible personal property being discriminated against by the treatment that is given to it by the taxing authorities of Kentucky, the discrimination is against tangible property which is required to pay more than twice the amount of tax paid on intangible property.

The taxing law, which this Court construed in the Greene case, and which was in force in Kentucky in 1915 was different from the law in force in Kentucky in 1925 and now. Necessarily the construction placed upon the taxing law in Kentucky in the case of Greene v. Louisville & Interurban R. Co., *supra,* can have no application whatever to the law of Kentucky as it existed in 1925 and as it exists now.

Again on page 14 of appellant's brief, he states:

> "The Kentucky Court (R. 62) says:
>
> " 'Appellant cannot complain that land in Jefferson County is equalized at 70%; for land is equalized in each county by the county board because land values depend on local conditions; but intangible property is equalized by the State board and is uniform throughout the State.'
>
> "Just how this statement answers our claim that we were not given equalization we cannot see.

> If land in Jefferson County was equalized by the county board, and upon local conditions, why were we not entitled to equalization when our land was assessed at 100%, and other land in that county assessed at 69.9%? It matters not, therefore, whether the ratio between assessed and real value be taken in Jefferson County alone or taken in the whole State, for in either case we have been denied equalization."

The foregoing statement in appellant's brief is unfair in that it is made to a Court which is not familiar with the taxing laws of Kentucky and the procedure thereunder.

(a) When appellant quotes from the opinion of Judge Hobson in Klein, *et al.*, v. Jefferson Co. Board of Tax Supervisors, *et al.*, 230 Ky. 182, 18 S. W. (2d) 1009, and then remarks, "Just how this statement answers our claim that we were not given equalization we cannot see," he is certainly overlooking a very cogent, lucid and unanswerable explanation of this identical point previously made in that opinion, which we will here quote for the convenience of this Court:

> "(2, 3) Appellant complains that his property is assessed at $95 a share when land in Jefferson County is only assessed at about 70 per cent of the average sale value, in voluntary sales. In the classification of property land is placed in one class, corporate stock in another. They are taxed at different rates. Appellant cannot at least complain that property in a different class from his property is assessed too low, unless the inequality

is gross, or such as to show an unreasonable discrimination. This is not shown. The proof shows that the purchaser of land is generally a person who wants that property, and is willing to pay more for it than one who does not need it. Private sales are usually made on credit, and people will pay more for property on credit than for cash. The board of tax supervisors, sitting in Louisville and acquainted with local conditions, judged that 70 per cent of the sale values represented about fairly the cash value of real estate. Some weight must be given to their judgment, for after all this is a matter of judgment. On the other hand, appellant's stock is valued according to the price it was bringing day by day on the stock market. He does not deny that his stock was selling at $95 a share day by day. There is no better way of fixing the actual cash value of a thing than the average of such daily sales for cash. The Constitution of the State requires that all property shall be assessed at its fair cash value, at voluntary sale. The Court is unable to see, therefore, that appellant is entitled to any relief under the Constitution of Kentucky."

(b) Again, when he remarks in this excerpt, "If land in Jefferson County was equalized by the county board, and upon local conditions, why were we not entitled to equalization when *our land was assessed at 100%*, and *other land in that county assessed at 69.9%*," we must express our surprise at this *declaration, for the simple reason that the assessing authorities of Kentucky in the instant case were dealing with*

*the market value of stock only and did not have under consideration the land values belonging to appellant or any other person or corporation in Jefferson County, Kentucky.*

If the appellant was assessed at 100% of the value of his real property in Jefferson County for 1925 when other real estate in that county was assessed at 69.9%, a complaint on this point should have been raised before the Board of Tax Supervisors of Jefferson County and if denied relief then said complaint should have been raised before the Jefferson Quarterly Court, the Jefferson Circuit Court, and the Court of Appeals of Kentucky. No such complaint is disclosed in the record of this case.

Upon the other hand, if by this excerpt the appellant is undertaking to state that the Standard Sanitary Manufacturing Company owned real estate in Jefferson County, and its real estate for 1925 was assessed at 100% of its actual value, when in fact other land in Jefferson County was assessed at only 69.9%, then this is a complaint that should have been made by the Standard Sanitary Manufacturing Company, as a corporation, in its own behalf, before the Board of Tax Supervisors of Jefferson County, and not by appellant, and certainly has no place in this case.

While the appellant in the beginning of this case undertook not only to act on his own behalf, but on the behalf of all other owners of stock in the Standard Sanitary Manufacturing Company who resided in Jefferson County before this case was acted upon by our

Appellate Court, his right to voluntarily act for others who owned stock in this corporation was brought before the Court of Appeals of Kentucky in the case of Cossar, Sheriff, v. Klein, 227 Ky. 768, 14 S. W. (2d) 160, in which our Court of Appeals, in discussing this identical question, and in construing Section 4128, Ken tucky Statutes, speaking through Chief Justice Clay, said:

> "(1) The first question to be determined is the right of Klein to maintain an action on behalf of the other stockholders. Section 4128, Kentucky Statutes, provides that any taxpayer feeling himself aggrieved by the action of said board of supervisors may appeal to the quarterly court within 30 days *after the final* adjournment of the said board, by filing with the judge of said Court a certified copy under the hand of the clerk of said board of the action taken. It further provides that 'he shall have the right to appeal from the decision of the quarterly Court to the Circuit Court and then to the Court of Appeals in the same manner that the law now allows appeals in civil cases.' The procedure is purely statutory, affording a remedy for an aggrieved taxpayer, if he thinks his property is not liable to assessment, or that an excessive valuation has been placed upon it. ***There is nothing in the statute which authorizes one taxpayer to act for another or others,*** and, in the absence of such provision in the statute itself, no such right exists. The statute confines the remedy to the aggrieved taxpayer, and he may not assume to act for others. * * *."
>
> **Cossar, Sheriff, v. Klein, 227 Ky. 768, 14 S. W. (2d) 160.**

The opinion construing Section 4128, Kentucky Statutes, was handed down by the Court of Appeals on December 21, 1928, and a rehearing denied March 29, 1929. It is binding not only upon appellant but on this Court. Forsythe v. City of Hammond, *supra.*

While the opinion of the Court of Appeals in the instant case was handed down June 21, 1929, and as appellant was a party in each of these case, we can conceive of no excuse for the declaration, "If land in Jefferson County was equalized by the county board, and upon local conditions, why were we not entitled to equalization when our land was assessed at 100% and other land in that county assessed at 69.9%," if he meant by that declaration that real estate of the Standard Sanitary Manufacturing Company was assessed at 100% of its real value, first, because he had no right to act before either Tax Board or the Courts in tax appeals concerning assessments of the property of a corporation, and second, because the assessment of real estate is a matter not involved in this controversy.

Continuing, on page 15 of this brief, the appellant states:

> "The State Court does not, of course, controvert our claim that the assessment of real estate, both in Jefferson County and in the State of Kentucky, was systematically, habitually and intentionally assessed at 69.9% in Jefferson County, and 65 or 70% in the State, and indeed the testimony of Ben Marshall, of the State Tax Commission, implies such habitual, systematic and in-

tentional assessment of real estate at the depressed values aforesaid."

We most emphatically deny that the testimony of Ben Marshall, of the State Tax Commission of Kentucky, directly or indirectly implies that land in Jefferson County was "systematically, habitually and intentionally" assessed at 69.9% of its real value or that land throughout the State was habitually, systematically or intentionally assessed at 65 or 70% of its real value.

For this Court's convenience we will quote questions 6, 7 and 8, with their answers, of Ben Marshall's deposition offered by appellant and appearing on page 30 of the record herein, as follows:

"Q. 6. Will you examine that list which you have just filed, and state generally what the relation is of the sale value of the lands with respect to the assessed valuation of the lands in the counties of Kentucky as a whole, and especially with respect to the county of Jefferson of the State of Kentucky.

"(fol. 59) A. Without making an actual calculation, it is my opinion that the transfers made by the clerks of the date mentioned for the one hundred and twenty counties of the State, that the assessed value will average between 65 and 70 per cent of the sale value of the property transferred.

"Q. 7. Will you examine this record, copy of which you have filed, and give me this information with respect to the sale values of lands in Jefferson County as compared with the assessed

valuations of lands in Jefferson County, Kentucky?

"A. Having examined the record it disclosed that the assessed value was 69.9 per cent of the sale value in Jefferson County.

"Q. 8. I will ask you, Mr. Marshall, whether or not in making this estimate you have just given, you took into consideration the fact that the United States revenue stamps were required to be attached to all deeds made prior to July 1, 1924, for some years last past before said date.

"A. In making the calculation to ascertain the percentage of the assessed value as compared to the sale value it was necessary in 90 per cent of the cases to use the revenue stamps as the basis of the real consideration in the transfer."

Under the tax laws of Kentucky, the State Tax Commission, in order to equalize the value of all property in any county with the value of all property in other counties, has the right to lower or raise the blanket value of any class of property in any county, and as an element of evidence of the true value of real estate in any county for the State Tax Commission to act upon, the law requires that the county court clerk shall report to the State Tax Commission each year the transfer price of all real estate sold in any county during the year as disclosed by the deeds for real estate recorded in his office.

In many instances the consideration stated in the deed is "one dollar and other valuable considerations." Sometimes shrewd real estate men who pur-

chase real estate for the purpose of reselling same at a profit are known to insert a larger consideration in the face of the deed than they paid for the real estate. Hence the county court clerk estimated the true selling price of the real estate in the year 1924 for 1925 by the revenue stamps that were attached to the deeds. Thus, in dealing with this element of evidence, the State Tax Commission knew that it was inaccurate, and it further knew that the transfer price of real estate did not determine the true value of real estate. There is no open and free market for real estate in Kentucky, as there exists for the sale of stock and bonds. If a factory wishes to expand and build an addition to its plant, the man who owns real estate next to that factory knows that the factory, before it would build a unit disconnected from the home plant, would pay a fancy price, above the real value of the real estate adjoining its plant, and that he can demand and receive from that factory a "hold-up price" for that real estate. Most transfers of real estate in Kentucky are made because the purchaser of that real estate has a special reason for buying same, or because the owner of said real estate by reason of financial distress is forced to sell it, which enables the purchaser to practically fix his own price. Hence, it becomes necessary, in order to get the true value of the real estate, to have local boards in each county who know the conditions which exist in that county, not only to take the consideration named in the deed of the transfers of real estate which

are laid before them by the county court clerk, but all other information that they personally have or can obtain, and thus fix the true value of the real estate in each county. And those local boards have fixed the true value of real estate in each county at from 65 to 70% of the sale value that was disclosed by the revenue stamps placed on the deeds recorded in the county court clerk's office in the year 1924 for the year 1925. And the testimony of Ben Marshall discloses this fact and this fact only, and no other inference is justified. Likewise, his testimony was that the true value of real estate as determined by the Board of Tax Supervisors of Jefferson County was 69.9% of the sale value in that county.

The Assistant Attorney General of Kentucky who represented the Board of Tax Supervisors of Jefferson County only asked one question on cross-examination of Ben Marshall, and the answer to that question absolutely destroyed appellant's opportunity to win his case under the law of Kentucky. We will discuss that question later.

We now desire to direct the Court's attention to Question No. 1, and the answer thereto on re-direct examination (R. 31), which question and answer are as follows:

> "R. D. Q. 1. In the answer to the last preceding question, Mr. Marshall, you do not mean to state, do you, that the same taxing method with respect to the assessment of *real estate is used when it comes to the assessment of real estate is used when*

*it comes to the assessment of such shares of stock,* do you?

"A. In my opinion real estate is assessed for more than 80 per cent of its value. There being no market quotations, this Commission is at a loss to find 100 per cent valuation on real estate. The valuation on Monday night be one price and by Saturday of the same week it might be advanced or depreciated more than 25 per cent, for the reason that the real estate is only transferred to particular individuals who want that particular peice or estate for certain purposes, and it has a greater value to them than it does to the other 99 per cent of the people in the same vicinity. Intangible personal property is required to be listed at 100 per cent of its market value on the first day of July, and I believe in a great majority of cases, that which reaches the assessor's book is assessed at 100 per cent of its market value."

We wish to call your attention to the fact that Mr. Ben Marshall, who had had practically ten years experience upon the State Tax Commission of Kentucky, as Secretary, emphatically stated in this answer that there was no market quotation on real estate and that the Commission was at a loss to find 100% value on real estate, but that *he believed that real estate in Kentucky in 1925 was assessed for more than 80% of its real value.* In other words, the testimony of this witness is, not that real estate is valued in counties other than Jefferson County at from 65 to 70% of its real value and in Jefferson County at 69.9% of its real value, but that in the State as a

whole the real estate was assessed for more than 80% of its real value. Unfortunately, he does not state how much more that value is fixed above 80% of its true value. But if he had not meant that it was fixed at practically its true value, he would not have used the expression, "for more than 80%."

Thus is it disclosed that appellant is in error when he states that "The State Court does not, of course, controvert our claim that the assessment of real estate both in Jefferson County and in the State of Kentucky was systematically, habitually and intentionally assessed at 69.9% and 65 and 70% in the State."

It is perfectly fair to all parties concerned to state that upon the part of the board of tax supervisors of Jefferson County, the previous administration of the Attorney General's office prepared this case for the Court of Appeals. This statement is made not in criticism or by way of evasion, for we think the record is in splendid condition so far as the board of tax supervisors of Jefferson County is concerned, but when appellant used the expression, "The State Court does not, of course, controvert," we wish to state that the burden of proof was upon the appellant. The Court of Appeals reviewed the evidence and in its opinion held that the appellant failed to make out his case, and the reason, we think, that the Court of Appeals so held, is disclosed in the single question and answer on cross-examination of Ben Marshall, on page 31 of the record, which question and answer are as follows:

"X. Q. 1. Mr. Marshall, are all holders of stock in corporations of the character and in the situation of the Standard Sanitary Manufacturing Company and other corporation (fol. 60) so situated, assessed and taxed in the same manner and upon the same basis?

"A. They are, absolutely."

Here is this whole controversy in a nut shell:

The valuation of appellant's stock by the taxing authorities and the levy that was made upon his stock, was the same valuation, levy and treatment as was given to all other stock of the same kind similarly situated. It received the same treatment which all property received that belonged to the class in which said stock was classified by the Legislature of Kentucky.

(2) On page 13 of his brief the appellant states:

"That inasmuch as the State cannot tax a foreign corporation's property outside of the State, and can only tax the percentage of its property which may be in the State, *it should not be possible to tax shares in the corporation held in the State, or, at most, tax them at a ratio in excess of the percentage by which the State could tax the corporation's property.*"

The Commonwealth of Kentucky is not attempting to and does not desire to tax property that is permanently located in any other state. The taxation of property permanently located outside of the boundary of Kentucky is not involved directly or indirectly in this case, but when appellant makes the declaration in his brief in the discussion of the taxation of shares

of stock in the hands of the shareholders issued by a foreign corporation that "it should not be possible to tax shares in the corporation held in the state, or, at most, tax them at a ratio in excess of the percentage by which the State could tax the corporation's property," we wish to challenge this statement, for the simple reason that a share of stock of a corporation in the hands of a shareholder, provided the corporation is a going concern, possesses elements of value that are not embraced by the physical assets of the corporation. The share of stock represents the value of the earning capacity of the corporation that is produced by its contracts for sale of the products of the corporation or the service that it is rendering. Sometimes the value of the shares of stock are enhanced by the business manager who controls and directs the operations of the corporation. Time and again Mr. Harriman took charge of railroads that were defunct in a commercial sense and, by his good judgment in controlling the activities of the corporation, would in a short time cause stock in that railroad corporation, which previously went begging for a buyer, to sell above par and the commercial world was eager to secure possession of this stock. Sometimes the corporation has a monopoly of a service in a particular community or of a product that is to be sold and this monopoly within itself causes the share of stock to possess a value that is far in excess of the value of physical tangible property.

When appellant undertakes to restrict the power of the State of Kentucky and prohibit it from taxing a share of stock beyond the value of the interest in the physical property that is owned by the corporation and represented by the stock and is listed for taxation by the corporation in Kentucky it is depriving the State of the power to tax several of the greatest elements of value that enters into the market price of stock, because he is prohibiting it from taxing the value of the earning capacity, good will, and other elements of value in that share of stock. To limit the power of the State to the taxation of the physical property of the corporation would limit the State to the taxation of junk value only, because all property owned by the corporation is secondhand property and naturally, if sold separate and apart from the going value of the corporation, would bring only junk prices.

The distinction between the value of the physical assets of a corporation and the value of a share of stock in the hands of the shareholder of that corporation was before this Honorable Court in the case of Howley v. Malden, 232 U. S. 1, 58 L. Ed. 477, and Mr. Justice Hughes, in speaking for this Court, said:

> "* * * Shares fall within a different category. While the shareholder's rights are those of a member of the corporation entitled to have the corporate enterprise conducted in accordance with its charter, they are still in the nature of contract rights or *choses in action*. Morawetz Priv. Corp. Section 225. As such, in the absence of legislation prescribing a different rule, they are

> appropriately related to the person of the owner, and, being held by him at his domicile, constitute property with respect to which he is under obligation to contribute to the support of the government whose protection he enjoys. * * *"

To illustrate the principle involved, John Smith, of Kentucky, lends to William Jones, of Tennessee, $1,000 and Jones executes a negotiable promissory note to Smith for this loan and invests the proceeds in a farm in the State of Tennessee. Under the theory of the appellant we would have no right to tax the note in the hands of Smith, because the proceeds for which said note was executed is invested in a farm that is taxed by the State of Tennessee. But that note is a chose in action that possesses value to the amount of $1,000 in the State of Kentucky. It is property of that value and the State of Kentucky has a right to tax it. It is true that the note is merely the evidence of the debt. If it were lost or destroyed without the fault of the owner, the debt could be recovered from the maker thereof.

So it is with the share of stock in the hands of a shareholder. It is an obligation of the corporation to that particular shareholder that has the nature of a chose in action.

This point was before the Supreme Judicial Court of Massachusetts in the recent case of Hood Rubber Co. v. Commonwealth of Massachusetts, 238 Mass. 373, 131 N. E. 203, in which Chief Justice Rugg, speaking for that Court, said:

"The issuance of a certificate is merely giving evidence of a property interest in the corporation in the 'nature of contract rights or choses in action.' Hawley v. Malden, 232 U. S. 1, 9, 12, 34 Sup. Ct. 201, 58 L. Ed. 477, Ann. Cas. 1916 C 842; Bellows Falls Power Co. v. Commonwealth, 222 Mass. 51, 57, 109 N. E. 891, Ann. Cas. 1916 C 834. *That property interest exists and may be enforced even though no certificate of stock be issued.* Old Dominion Mining & Smelting Co. v. Bigelow, 203 Mass. 159, and cases collected at 198, 89 N. E. 193, 40 Law Rep. Ann. (N. S.) 314."

The doctrine set forth by this Honorable Court, through Mr. Justice Swayne in the case of Farrington v. State of Tennessee, 95 U. S. 679, 24 L. Ed. 558, has never been repudiated by it, and therein it is stated:

"* * * The capital stock and the shares may both be taxed, and it is not double taxation. The bank may be required to pay the tax out of its corporate funds, or be authorized to deduct the amount paid for each stockholder out of his dividends. * * *"

As late as January 21, 1916, this point was before this Honorable Court in the case of Rogers, *et al*, v. County of Hennepin, *et al.*, 240 U. S. 183, 60 L. Ed. 594, in which Mr. Justice Hughes, in speaking for this Court, said:

"* * * It is also apparent that there is no merit in the objection that there was a violation of the federal constitution through what is called double taxation. The membership (referring to

a seat upon a stock exchange), as property, was distinct from the assets of the corporation. * * * *"

The fundamental error of appellant in his suggestion in No. 2 is in forgetting that the share of stock in the hands of the shareholder is a contract right in the nature of a chose in action which has been executed by the corporation to the shareholder, and it is this contractual right or chose in action that the State of Kentucky is taxing and not the physical assets of the corporation. It is true that the corporation may have taken the proceeds that it received for this share of stock and invested it in the physical assets of the corporation, as Mr. Jones took the $1,000 borrowed from Mr. Smith and invested it in a farm in the State of Tennessee. These physical assets of the corporation strengthen its ability to carry out its contractual obligation evidenced by its share of stock. But a farm in the State of Tennessee is separate, distinct property from the note which Jones executed to Smith, and is a chose in action held by Smith in the State of Kentucky,—property of value that the State of Kentucky has a right to tax just the same as it has the right to tax the shares of stock in the hands of appellant.

(3) Again, on page 13 of his brief appellant states:

"In sympathy with the principle just mooted, this Court is now restricting the rule under which double or multiple taxation has been allowed. See

Farmers Loan & Trust Co., Executor of Taylor, v. Minnessota, 280 U. S. 204, (January 6, 1930)."

Mr. James M. Gray in his excellent work "Limitations of Taxing Power and Public Indebtedness," has undertaken in Section 1359 of that work, to define double taxation, as follows:

> "Double taxation is the taxation of property twice in the same levy; or, more precisely, the taxation of persons, in respect of the same property or privilege, twice in the same levy. * * * Usually where double taxation is complained of, it is in the shape of taxation of interests which are nominally different but which are claimed to be essentially the same."

If property is taxed twice in the same levy it necessarily must be taxed by the same taxing authority in producing double taxation as set forth in the above definition. It does not contemplate the taxation of the same property by two equal sovereigns, one of which has no tax jurisdiction of the property.

Volume 1, Cooley on Taxation, page 505, Section 240, 4th Edition, in discussing double taxation, stated:

> "While taxes are levied upon the individual, and not upon property, though the value of the property owned by him is the standard by which the extent of his liability is ascertained and measured, and, therefore, the imposition of a tax twice upon one person *for the same purpose* because of his ownership of a particular piece of property would be a double tax, which, in consequence of its inequality, would not be sustained, *yet when the*

> *same property represents distinct values belonging to different persons, be those persons natural or artificial, both persons may be lawfully taxed, and the amounts of their separate contributions would be fixed by values which the same property represented in the hands of each, respectively. And this would not be double taxation in the sense in which it is obnoxious to a constitutional provision requiring equality in taxation or prohibiting double taxation.* In short, taxation of two or more is not double where the subject on which the tax is imposed is held by different titles. * * *."

A corporation owns its physical assets and as such assets their value is subject to taxation against the corporation. The shareholder of that corporation owns the obligation of the corporation in the nature of a chose in action, which gives to the shareholder an interest under certain conditions and restrictions in the same physical assets plus other values, such as good-will, dividend earning power, the ability with which the corporate affairs are managed, the confidence reposed in the capacity and permanency of tenure of the officers, and all other indirect and intangible increments of value which enter into the estimate of the worth of stock and help fix the market value or selling price of the shares, as specifically set forth by this Honorable Court in the case of San Francisco National Bank v. Dodge, 197 U. S. 70, 25 Sup. Ct. Rep. 384, 49 L. ed. 669.

The declaration that this Honorable Court is now restricting the rule under which double or multiple

taxation has been allowed, citing Farmers Loan & Trust Co., etc., v. Minnesota, *supra*, suggests an element of truth, mixed with error, which is misleading. Any person who reads the opinion of this Court as delivered by Mr. Justice McReynolds, will gather the thought that this opinion was striking at the assumed right of a state to tax property not within its jurisdiction for purposes of taxation. It does not deal with the proposition of a state undertaking to tax property twice of which it has jurisdiction under the same levy, or of a state doubling the levy upon the same property, but this opinion deals with the principle of law that is involved when two separate, distinct sovereign states undertake to tax the same property or privilege and one of those states has no taxable jurisdiction of it.

Of like import is the case of Thomas A. Baldwin, *et al.*, v. State of Missouri, decided May 26, 1930, in which Mr. Justice McReynolds, speaking for this Court, reaffirmed the doctrine set forth in the case of Farmers Loan and Trust Co. v. Minnesota, *supra*.

(4) On page 14 of appellant's brief he makes this statement:

> "* * *. It is not within the power of the State to arbitrarily discriminate between corporations as to the taxation of their shareholders or their shares. Both corporation and shareholders are interested to the contrary—the shareholder because the price of his share is diminished, and the corporation because it cannot raise money in competition with his competitors in whose favor the discrimination is made. These considerations

are regarded by this Court as of great importance because so large a part of the country's wealth is invested in negotiable securities."

The error that enters into the foregoing excerpt from appellant's brief is the fact that he assumes that all shares of all corporations can be taxed *only in one class*. He forgets that domestic corporations that own and pay taxes on 75% of all of their tangible property to the State of Kentucky are entitled to a different consideration by the taxing authorities of the State than the shares of stock that are in foreign corporations which do not pay taxes upon any tangible property to the State of Kentucky or pay only on an inconsequential percentage of its tangible property to Kentucky.

The purpose of Section 4088 of the Kentucky Statutes is to divide corporate stock in two separate distinct classes and for two purposes: First, that all owners of stock in Kentucky may be required to pay tax to it for its support, either through the payment of tax upon 75% of the assets of the corporation or by paying upon the valuation of the stock. The second purpose is to avoid double taxation; and the reason that this section exempts the stock of a corporation that has already paid taxes to the State of Kentucky upon 75% of its tangible assets is because the Legislature desired to avoid double taxation. The State is not trying to avoid double taxation because of any inhibition or prohibition in the 14th Amend-

ment to the Federal Constitution, but because it desires to be fair to its taxpayers.

This Honorable Court has repeatedly affirmed the doctrine that when a state has jurisdiction of property and of the person that owns that property the 14th Amendment does not prohibit it from levying double taxation thereon.

The State of Kentucky as a public policy desires to encourage investment by corporations in Kentucky. In so far as it can legally do so, it is the public policy of the State to encourage that type of investment by making its tax laws as reasonable as possible to those corporations which utilize the raw products of Kentucky and furnish employment to the labor of the State.

Corporations are required to list all of their property that is subject to taxation which is within the State, but the General Assembly knew that the average property as a general thing was listed around 75% of its true value. And when a corporation has paid tax upon 75% of its assets it has paid about as much tax as the average person pays upon tangible assets, because as a whole nearly all tangible assets in the State are subject not only to state taxation but to county, municipal, school, and district taxation. It rigidly enforces the rule as to taxing corporate stock at 100% of its value. The reason for this is that intangible property is the pet of tax legislation and is subject only to a tax of 50c to the State, escaping

all taxation so far as county, municipal, school, and district taxation is concerned.

When any man understands the taxing system of Kentucky as a whole, he will discover that that system deals justice to each taxpayer.

B.

**TAXATION OF STOCK IN THE RATIO OF THE PROPERTY OF THE CORPORATION HELD IN THE STATE OF THE SHAREHOLDER'S DOMICILE TO THE ENTIRE PROPERTY OF THE CORPORATION HELD THERE AND ELSEWHERE.**

On page 16 of his brief appellant states:

> "The State of the shareholder's domicile taxes his shares on the assumption that every share represents an aliquot part of all the property of the corporation wherever situate. The assumption that the shares are themselves property, and property located within the State is the veriest and most mischievous fiction. This Court has lately said, in *Safe Deposit, &c., Co.* v. *Virginia,* 280 U. S. 83 (Nov. 25, 1929): * * *"

We again desire to call the Court's attention to appellant's allegation that the State taxes a share of stock on the theory that the stock represents only an aliquot part of the tangible property of the corporation wherever situated. This allegation is made for the specific purpose of causing this Court to assume that by taxing the share of stock of appellant the State of Kentucky is taxing property which belongs to the corporation and is located out of the State.

In taxing the share of stock, Kentucky is taxing the value of the obligation of the Standard Sanitary Manufacturing Company in the nature of a chose in action which it has executed to Mr. Klein. That obligation has a commercial value, and in the instant case, instead of that value being only the value of the aliquot part of the physical property of the corporation, it is a far greater value than that aliquot part. The book value of this stock is $39.11 per share (R. 39). This book value represents the aliquot part of the value of the assets of the corporation. But the average market value of the stock in December, 1924, was $117.00. The difference between $39.11 and $117.00, or $77.89, is the value of the stock above the aliquot part, based upon the assets of the corporation. It is true that property owned by this corporation gives it ability to perform its obligation and that property may be located in some state other than Kentucky. But the obligation has a taxing situs at the residence of appellant, the owner of the stock or obligation.

Appellant could with equal wisdom make the declaration that the assumption that a national bank note as property located in the State is the veriest and most mischievous fiction, and he could offer a metaphysical argument to justify this declaration that would be more reasonable than the argument that he has offered with relation to his stock, because the bank note is an obligation that is based upon another obligation which has been deposited with our national government. But the fact that that obligation de-

posited with the U. S. Treasury upon which that bank note has been issued, and is permanently located at Washington, D. C., does not destroy the value of the obligation of the bank to pay the holder of that bank note, and the obligation of the United States to back up the payment of that bank note, when found on the first day of July to be a part of the possessions of a citizen of Kentucky. The bank that issued the note may be a non-resident of Kentucky, and all of its assets may be located out of this State, but as long as the people have confidence in the integrity of the bank and the government of the United States to liquidate that bank note, the obligation it represents possesses a value that is taxable in Kentucky, and a declaration to the contrary would be as ridiculous as the declaration of the appellant that his certificate of stock possesses no value and that the only thing that is being taxed is an aliquot part of the physical property that is owned by his corporation.

We do not desire to make any comments upon the opinion quoted by appellant from the case of the Safety Deposit, &c., Co. v. Virginia, handed down by this Court November 25, 1929, because this Honorable Court, in its discussion in those excerpts of the fiction of *mobilia sequuntur personam,* was discussing only the situs of stock for the purpose of taxation, and did not consider or refer to the value of the stock or any element thereof, or to any principles of assessment as applied to stock in the hands of a shareholder dif-

ferentiated from the property that is owned by the corporation that issued the stock.

At the bottom of page 16 of appellant's brief, he states:

> "The State has no just right to tax the shares at a rate in excess of the ratio of property of the corporation within the state to all of its property in all of the states, if at all."

These repeated declarations of appellant only disclose that he is incapable of distinguishing between the value of an obligation of a person or a corporation and the property that is owned by that person and the corporation. We know of some people who, though they did not own a dollar or any property of any kind or character, yet could with their personality so impress the community that their promissory note would pass in any bank in that community. The heart and brain of American manhood has not ceased wholly to place a value on honor and integrity, independent of property.

Appellant mentions on page 17 of his brief the case of Bethlehem Motors Co. v. Flint, 256 U. S. 421, reversing 178 N. C. 399, 100 S. E. 693. He claims that there are features in this case suggestive of the principles involved in the case at bar. We fail to discover the analogy.

Under a statute of the State of North Carolina all persons and corporations are prohibited from selling automobiles unless either the person or corporation that manufactured the automobile or the agent of the

manufacturer first procures a license so to do. The license fee fixed by said statute upon the occupation of selling automobiles is $500.00. If this fee has been paid by the manufacturer, it does not have to be paid by the agent. However, there is a proviso in this law which states that if the manufacturer who produces the automobile, or his agent, files an affidavit disclosing that four-fifths of all the property owned by the person or corporation manufacturing the automobile is located within North Carolina and reported for taxation, or if four-fifths of all the assets of the corporation is invested in state or municipal bonds of North Carolina, the one manufacturing automobiles or his agent shall receive a refund of $400.00.

That was an effort by the Legislature of North Carolina to make two classes in the occupation of selling automobiles in a revenue measure, and it is not pretended that there is a natural difference between the two classes or a difference which arises out of the occupation of selling automobiles. Neither is the classification based upon a policy of occupational taxation; nor does it have a fair and substantial relation to the object of the legislation. It constitutes a plain discrimination in favor of resident manufactures of automobiles against non-resident manufacturers. It lays a burden upon commerce and usurps the functions of our Federal Congress in regulating commerce between the States. It clearly violates the equal protection clause of the 14th Amendment to the Federal Constitution in that the attempted classification re-

quires a man engaged in the occupation of selling automobiles that happen to be produced by a non-resident manufacturer to pay five times more than is required of one who, engaged in the same occupation, sells an automobile that is produced by a resident manufacturer of automobiles, and this classification has no relation to the object of the legislation, to-wit: the taxation of the occupation of selling automobiles. Upon the contrary, Section 4088 of the Kentucky Statutes, in controversy, is a part of our scheme of *ad valorem* taxation, and the classification that is made by the Kentucky Legislature is grounded upon a difference having a fair and substantial relation to the public purpose and policy of the legislation, to-wit:

(a) To cause all property to contribute revenue for the support of our State government.

(b) To avoid as far as possible double taxation in levying *ad valorem* taxes upon the tangible property of corporations and upon the shares of stock issued by said corporations held by stockholders, by a provision exempting from taxation the shares of stock of those corporations issuing the stock which have in that year paid taxes to Kentucky and its sub-taxing districts upon three-fourths of all their tangible property. The exemption is based upon the theory that the corporations own the title to and have the possession of their tangible property and have paid taxes to the state substantially equal to the taxes borne by property of equal value owned by natural persons, while the shareholders'

interest in the tangible property of the corporations, which have borne their share of the tax burden, is indirect, remote and contingent; and the exemption is therefore just.

(c) To encourage investment by its tax policy in those corporate industrial enterprises which will furnish a market for the raw products of Kentucky and employ its labor, by exempting the shareholder not only from taxation upon the value of his remote and possible interest in the tangible property of his corporation, but also from the other values embraced in his stock by reason of the fact that it was issued by a corporation which is a going concern, but which has borne a tax burden on its property substantially equal to the burden that is generally exacted of other property in the State.

**(b) Section 4088 is in Harmony with Principles Enunciated in Kidd v. Alabama, 188 U. S. 728.**

The justification for the Legislature and the taxing authorities of the State to thus look behind the net values of shares of stock and to take into consideration the fact that the property which gives vitality to the valuation of that stock has already borne a tax burden to the Commonwealth of Kentucky which is substantially equal to the tax burden which is borne by other property similarly situated, is set forth by this Court in the case of Kidd v. Ala., 188 U. S. 728, 47 L. Ed. 669, in which this Court met the contention in

a similar case that the State was denying equal protection of the laws to a complaining stockholder, and in speaking through Mr. Justice Holmes, said:

> "We see nothing to prevent a state from taxing stock in some domestic corporations and leaving stock in others untaxed, on the ground that it taxes the property and franchises of the latter to an amount that imposes indirectly a proportional burden on the stock. When we come to corporations formed and having their property and business elsewhere, the State must tax the stock held within the state if it is to tax anything, *and we now are assuming the right to tax stock in foreign corporations to be conceded.* If it does tax that stock, it may take into account that the property and franchises of the corporation are untaxed, on the same ground that it might do the same thing with a domestic corporation. There is no rule that the State cannot look behind the present net value of different stocks. See American Sugar Refining Co. v. La. 179 U. S. 89, 45 L. ed. 102, 21 Sup. Ct. Rep. 43."

The principles enunciated in the foregoing excerpt have been referred to and ratified by this Court in the cases of Wright v. Louisville, etc., R. R. Co., 195 U. S. 219, 49 L. Ed. 167, 25 Sup. Ct. Rep. 16, Union, etc, Transit Co. v. Kentucky, 199 U. S. 205, 50 L. Ed. 154, 26 Sup. Ct. Rep. 36, Armour Packing Co. v. Lacy, 200 U. S. 235, 50 L. Ed. 457, 26 Sup. Ct. Rep. 232, Michigan, etc, R. R. Co. v. Powers, 201 U. S. 293, 50 L. Ed. 761, 26 Sup. Ct. Rep. 466, Liverpool, etc., Ins. Co. v.

Bd. of Assessors, 221 U. S. 356, L. R. A. 1915C, 903, 55 L. Ed. 768, 31 Sup. Ct. Rep. 550, Darnell v. Ind., 226 U. S. 398, 57 L. Ed. 272, 33 Sup. Ct. Rep. 120; Hawley v. City of Malden, 232 U. S. 10, 13, Ann. Cas. 1916C 842, 58 L. Ed. 482, 34 Sup. Ct. Rep. 201; Fidelity & C. Tr. Co. v. Louisville, 245 U. S. 58, 62 L. Ed. 148, L. R. A. 1918C 124, 38 Sup. Ct. 40; Cream of Wheat Co. v. Grand Forks Co., 253 U. S. 330, 64 L. Ed. 934. 40 Sup. Ct. Rep. 558; Watson v. State Comptroller, 254 U. S. 125, 65 L. Ed. 175, 41 Sup. Ct. Rep. 44; Citizens Nat. Bank v. Durr, 257 U. S. 109, 66 L. Ed. 154, 42 Sup. Ct. Rep. 15.

If the Legislature and taxing authorities of Kentucky cannot rely upon this long list of precedents repeatedly enunciated by this Court, we are wondering where the Legislature and taxing authorities of the states can look for a guide to point them to correct principles to be followed in the framing and in the application of state laws upon taxation.

After this Court had enunciated the rule that the legislature of the state had the right in fixing a classification for the taxation of shares of stock to look behind the net values of different shares of stock and if the corporation which issued that stock had paid to the state upon its tangible property and franchises a tax substantially equal to that tax other property had paid that that fact could be taken into consideration in determining exemptions and the different rates to be placed upon shares of stock issued by corporations

that had not contributed their substantial proportion of tax to the state.

Various states incorporated these principles enunciated by this Court into the taxing laws of their state and made them an integral part of their taxing system. This fact is disclosed by the large number of decisions of state courts which have cited the case of Kidd v. Ala., *supra*, as a justification of tax laws which have been adopted by the legislatures of their respective states in the following cases:

Darnell v. State, 174 Ind. 155, 90 N. E. 773; State v. Nelson, 107 Minn. 324, 119 N. W. 1060; State v. Tennessee, etc., Ry. Co., 188 Ala. 522, 66 So. 180; The State v. Ala. Fuel & Iron Co., 188 Ala. 511, 66 South 176; Georgia R. R., etc., Co. v. Wright, 124 Ga. 609, 53 S. E. 257; Commonwealth v. Union, etc., Transit Co., 118 Ky. 142, 80 S. W. 493; Bellows Falls Power Co. v. Commonwealth, 222 Mass. 62, 64, Ann. Cas. 1916C 834, 109 N. E. 897; Bliss v. Bliss, 221 Mass. 211, L. R. A. 1916A 889, 109 N. E. 152; State v. Parker Distilling Co., 236 Mo. 291, 139 S. W. 474; People v. Reardon, 184 N. Y. 451, 112 Am. St. Rep. 641, 77 N. E. 976; I. M. Darnell & Son v City of Memphis, 116 Tenn. 438, 95 S. W. 819; Chicago, etc., R. Co. v. State, 128 Wis. 644, 108 N. W. 581; Kingsley v. Merrill, 122 Wis. 201, 67 L. R. A. 200, 99 N. W. 1049; Denver v. Hobbs Estate, 58 Colo. 228, 144 Pac. 877; City of Trenton v. Standard Fire Ins. Co., 76 N. J. L. 81, 68 Atl. 1112; Birmingham v. O'Connell, 195 Ala. 63, 70 So. 185; State, *ex rel.*, Atty. Gen. v. Bodcaw Lumber Co., 128 Ark. 511, 194

S. W. 694; First Nat. Bank v. Moon, 102 Kan. 350, L. R. A. 1918C, 986, 170 Pac. 40; Bellows Falls Power Co. v. Commonwealth, 222 Mass. 62, 64, Ann. Cas. 1916C, 834, 109 N. E. 897; State, *ex rel.*, Fargo v. Wetz, 40 N. D. 313, 5 A. L. R. 731, 168 N. W. 840; State, *ex rel.*, Langer v. Packard, 40 N. D. 198, 168 N. W. 676; Commonwealth v. Semet-Solway Co., 262 Pa. 237, 105 Atl. 93; Sayles v. Foley, 38 R. I. 491, 96 Atl. 344, 12 N. C. C. A. 949; Northwestern Mut. Life Ins. Co. v. State, 163 Wis. 493, 155 N. W. 612; Detroit v. Kresge, 200 Mich. 684, 167 N. W. 44; O'Neil v. Providence Amusement Co., 42 R. I. 534, 108 Atl. 908; besides the comment in the notes in 43 A. L. R. 687, under the heading of "Alabama."

We think it is remarkable that in the search we have made we found no opinion, State or Federal, which criticises Kidd v. Alabama.

Frankly, when we observe how the principles enunciated by this Court in Kidd v. Alabama, *supra*, have been embodied in the legislation of so large a number of the States of the American Union and the legislation upheld and justified by the principles therein enunciated by this Court by the repeated opinions of the respective Supreme Courts of the various States, as well as by this Court, we can see no reason why these principles should be overturned simply because the petted and pampered owners of intangible property desire to be freed from all obligation of contributing to the support of the State governments that give legal life, vitality, and protection to their property and who are

the first and the most exacting people in demanding from the State the protection of their property rights.

**(c) The Classification in Section 4088 is Justified by the Policies and Purposes of Permitted Legislation.**

There is no question but that the Kentucky Legislature in enacting Section 4088, Kentucky Statutes, had in mind the purpose and policy of encouraging investment in corporations which were utilizing the raw products and labor of Kentucky, and further there is no question but that a classification can be made in taxation that has as a basis that or a similar purpose and that the carrying out of such a purpose and policy is not a violation of either the due process or equal protection clause of the 14th Amendment.

In the case of the Southwestern Oil Company, Plaintiffs in Error, v. The State of Texas, 217 U. S. 112, 54 L. Ed. 688, this Honorable Court made a complete analysis of the powers of the State in classifying property for the purpose of taxation. The opinion was written by Mr. Justice Harlan—a soldier in the Union Army, in the War between the States, a lawyer of extraordinary learning, a man who was familiar with the history, the times and the motivating purposes which generated and promulgated the 14th Amendment—and in speaking for this Court, he said:

> "* * * We think that we are safe in saying, that the 14th Amendment was not intended to compel *the State to adopt an iron rule of equal taxation.* If that were its proper construction, it would

not only supersede all those constitutional provisions and laws of some of the States, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material, but it would render nugatory those discriminations *which the best interests of society require; which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice; and which every State in one form or another, deems it expedient to adopt.*"

In the foregoing excerpt this Court definitely states the legal right and power of the State under the 14th Amendment to so devise its system of taxation as to either encourage needed and useful industries or to strike at intemperance and vice. Of course the policy that would encourage useful and needed industry must be grounded in justice and the classification must not be arbitrary, but this Court having enunciated, in Kidd v. Alabama, *supra,* the right of the State to look behind the asset value of a share of stock and discover whether or not the corporation has contributed to the State taxes based upon the property that it owns in quantity that is substantially equal to that required of other persons and corporations and, when it discovers that ample contribution has been made, it can use that fact as a basis upon which to fix the exemption of the corporation's stock in the hands of the stockholder. The purpose and policy to bring a useful and needed industry in the State is alone sufficient as a basis for classification, but when linked to the principles of jus-

tice as enunciated in the case of Kidd v. Alabama, *supra,* there can be no question but that such legislation meets every requirement of the 14th Amendment.

This point was made clear in the case of Anna H. Watson, etc., v. State Comptroller of the State of New York, 254 U. S. 121, 65 L. Ed. 170, in which Mr. Justice Brandeis, in speaking for this Court, said:

> "* * * *Any classification is permissible which has a reasonable relation to some permitted end of governmental action.* It is not necessary, as the plaintiff-in-error seems to contend, that the basis of a classification must be deducible from the nature of things classified,—here the right to receive property by devolution. *It is enough, for instance, if the classification is reasonably founded in 'the purpose and policy of taxation.'* "

This decision was handed down in October, 1920. It clearly gives the State the right to base the classification that has a reasonable relation to any permitted end of government, and what greater or more useful "permitted end of government" could be promoted and encouraged by the Legislature of a State than the investment of capital in those industrial enterprises within the State which will utilize the raw products and the labor therein and bring thereto capital and prosperity for the people of the State.

In the very recent case of Louisville Gas & Electric Company v. Clell Coleman, 277 U. S. 32, 72 L. Ed. 770, this Court had before it the mortgage recording tax of the State of Kentucky and also an exemption in favor

of building and loan associations. While it held in that case that the mortgage tax was invalid because arbitrary, it upheld the exemption as to building and loan associations, and in discussing the reasons therefor, Mr. Justice Sutherland, in speaking for this Court, said:

> "The exemption of building and loan associations from the operation of the tax is a different matter. The equal protection clause of the 14th Amendment does not preclude a State in imposing taxes from making exemptions, provided the power is not exercised arbitrarily. It may exempt the property of churches, charitable institutions, and the like; and it does not admit of fair doubt that, under the circumstances disclosed by the opinion of the court below in the Middendorf case, it has lawfully exempted building and loan associations. That court points out that a building and loan association under the Kentucky Statutes must receive payments from members only and make loans to members only; in pursuance of a plan set forth. Money accumulated is to be loaned to members according to a rule of priority. The essential principle of such an association is mutuality. *The purpose of the statutes, the court below says, was to provide the members of the associations with the means of borrowing mo. for the acquisition of homes, in recognition of the duty of the State to encourage the acquisition of homes by its citizens.* SUCH ASSOCIATIONS ARE ALSO PLACED BY THE STATE STATUTE IN A SEPARATE CLASS FOR PURPOSES OF AD VALOREM TAXATION. It is made clear by the lower court that the purpose of

> the exemption was to enable these associations, by relieving them of a burden, more completely to carry out the *quasi* public purpose which the legislature designed in providing for their creation. This exemption, therefore, must be upheld; * * *"

Thus the ground of sustaining the exemption from the mortgage recording tax in favor of building and loan associations by Kentucky was none other than the *quasi* public purpose which the legislature designed in encouraging the acquisition of homes by its citizens.

In the recent case of Ohio Oil Co. v. Conway, Supervisor of Public Accounts of Louisiana, 74 L. Ed., p. 456, Advance Sheets, Mr. Chief Justice Hughes, in speaking for this Court, emphasized this point, as follows:

> "The States have a wide discretion in the imposition of taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the national government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal system to insure revenue and foster their local interests."

Other decisions from this Court can be cited equally as strong as the foregoing, but these are so decisive in character and so recent in point of time that we deem it unnecessary to burden this brief with other citations upon this point.

**There is a Wide Difference Between the Taxation of a Share of Stock as the Property of the Owner and the Taxation of a Corporation upon its Capital Stock or Property—Different Property—Different Interests in Property—and Different Parties to be Taxed.**

On page 19 of appellant's brief, he states:

> "International Paper Company v. Massachusetts, 246 U. S. 133, expounds what is the most cogent in our favor. It reaffirms the principles of the Western Union Tel. Co. v. Kansas, and similar cases."

An examination of the foregoing case disclosed the fact that it is dealing with a license or privilege tax and not with an *ad valorem* tax, and that in fixing the amount of the license to be charged to a foreign corporation for entering the State or to continue to do business therein, Massachusetts used the number of shares of stock held by the foreign corporation for the purpose of measuring and determining the amount of the license tax to be charged against the corporation for the privilege of doing business. At that time Massachusetts had upon its statutes an Act that had been passed in 1909, which Act had been construed by this Court in the case of Baltic Mining Company, plaintiff-in-error, v. Commonwealth of Massachusetts, 231 U. S. 67, 58 L. Ed. 127, in which Mr. Justice Day, in speaking for this Court, sustained the validity of the original act as it had been interpreted by the Supreme Court of Massachusetts and, as interpreted, the orig-

inal act only undertook to tax the property and business of foreign corporations which were used and transacted in the State. Thereafter, the Legislature amended the 1909 statute in 1914, and the court of last resort in Massachusetts, in subsequently construing this statute of 1909, as amended by the 1914 Act, declared that under these two acts, Massachusetts had the right to levy a tax of 1/50 of 1% upon each share of capital stock up to $10,000,000, and upon each share above $10,000,000, a tax of 1/100 of 1% as a license tax against a foreign corporation for the privilege of entering or continuing to remain in Massachusetts for the purpose of transacting business therein; and the United States Supreme Court in the case above referred to in the above excerpt in appellant's brief held that the original Act of 1909, as amended by the Act of 1914, was then invalid by reason of the 1914 amendment, and Mr. Justice Van Devanter, in speaking for the Court in the case of International Paper Company v. Commonwealth of Massachusetts, 246 U. S. 133, 62 L. Ed. 624, said:

> "A license fee or excise of a given percentage of the entire authorized capital of a foreign corporation doing both a local and interstate business in several states, although declared by the state imposed is to be merely a charge for the privilege of conducting a local business therein, is essentially and for every practical purpose a tax on the entire business of the corporation including that which is interstate, and on its entire property, including that in other states; and this be-

cause the capital stock of the corporation represents all its business of every class and all its property, wherever located."

Thereafter, the Supreme Court of Massachusetts held that the Act of 1909 was an independent act, and that as the 1914 Act was invalid, it did not change or repeal the Act of 1909 and that it continued in full force and effect.

Subsequently, the Locomobile Company—a foreign corporation that had paid its tax under the 1909 and 1914 Acts—sued the Treasurer of Massachusetts for the return of the tax paid under the invalid tax act in the Federal District Court of Massachusetts. The State resisted the attempted recovery of the tax and plead that the tax was paid under the 1909 Act and that said act was not changed or repealed by the invalid act of 1914, citing the opinion of the Supreme Court of Massachusetts, rendered subsequent to the opinion of this Court in the case of the International Paper Co. v. Massachusetts, *supra,* in harmony with its plea. The District Court rendered judgment against the State. But this Court, on a writ of error, reversed the District Court and denied the recovery of the tax, in an opinion written by Mr. Justice Holmes in the case of Burrell v. Locomobile Co., 258 U. S. 34, 66 L. Ed. 450.

There is no question of the soundness of all three of these opinions, but neither of said opinions has any application to the case at bar.

In the instant case, Kentucky has not tried to levy either a license tax or an *ad valorem* tax against any

foreign corporation based either upon its capital stock or tangible property, but has taxed a share of stock that was issued by a foreign corporation and was owned by a resident of Kentucky, who is appellant herein. That share of stock is an obligation of the foreign corporation of the nature of a chose in action which was made by it to and is owned by the resident of Kentucky, and in his hands is property of value having a situs in this State, and is as subject to the *ad valorem* tax as any other chose in action in the hands of appellant or others.

We have recited the history of these three cases that we may clearly get before the Court that these cases, and all other cases mentioned by appellant in his brief from pages 19 to 26 inclusive, are cases upon which this Court has rendered opinions, but has in each instance dealt with a tax which was levied by a State against a corporation, and in nearly every instance either directly or indirectly taxed all of the capital stock of a foreign corporation or the tangible property of that corporation located both in and out of the State levying the tax. They do not deal with the problem in the instant case, to-wit: the right of a State to levy a tax upon a share of stock in a corporation which is owned by a resident of Kentucky. It seems to us that one of the fundamental errors of appellant's position is that he fails to recognize that the capital stock and tangible property which is owned by a corporation is the property of a person, which is not only separate and distinct from the person who owns a share of stock

of that corporation, but the share of stock in the possession of its owner is separate and distinct property from the corporate stock and tangible property of the corporation. And the distinctions here pointed out have been continuously recognized by this Court and repeatedly affirmed through a long list of cases, including Farrington v. State of Tennessee, *supra,* down to and including the case of Hawley v. Malden, *supra.*

The distinction here stated, we think, was clearly recognized and acknowledged in an opinion of this Court handed down by the great Chief Justice Marshall in the case of McCullough v. The State of Maryland, *et al.,* 4th Wheaton, 314, 4 L. Ed. 579. In this case this Court had before it the question whether or not the State of Maryland had a right to pass a law taxing banks created by the Congress of the United States, and, while this Court unanimously withheld that right, Chief Justice Marshall said:

> "This opinion does not deprive the State of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with other real property within the state, *nor to a tax imposed on the interest which the citizen of Maryland may hold in this institution in common with other property of the same description throughout the state.* But this is a tax on the operation of the bank, and is consequently, a tax on the operation of an instrument employed by the government of the Union to carry its powers into execution. Such a tax must be unconstitutional."

In this opinion, while this Honorable Court is holding that a bank created by the Congress of the Federal Union for the purpose of carrying on its business, cannot be taxed by a State, yet when it said that that decision did not apply to "a tax imposed on the interests which the citizen of Maryland may hold in this institution" it was saying that Maryland had a right to tax the share of stock in the bank held by its citizen because his interest in the bank could be nothing else except that share of stock. And the reason therefor is the one which we have repeatedly stated in this brief, to-wit: that the share of stock was the obligation of the bank, in the nature of a chose in action, which was owned by the citizen and was property like similar obligations and subject to State taxation as the property of the appellant in the instant case, and it was neither the capital stock of the bank nor its property.

C.

UNSOUNDNESS OF DOUBLE OR MULTIPLE TAXATION.

On page 27 of his brief, the appellant states:

> "* * * but while shares are available, they are so because they represent property, and when the property is in another State, taxation of the shares is taxation of property outside the jurisdiction of the taxing State. *There is no escape from this conclusion.* But such taxation has always been an abuse, and has led courts and legislatures into inextricable inconsistencies. These have of late been recognized as injustices and enormities."

The italics above are those of appellant.

His contention that a taxation of the shares is a taxation of property outside the jurisdiction of the State, and "there is no escape from this conclusion," is in direct conflict with the recent opinion of this Court in the case of Rhode Island Hospital Trust Co. v. Doughton, Commissioner of Revenue of the State of North Carolina, 270 U. S. 68, 70 L. Ed. 475. In this case one George Briggs died October 29, 1919, testate, domiciled in the State of Rhode Island. He never resided in North Carolina. The Rhode Island Hospital Trust Company was appointed his executor and qualified as such before the Municipal Court of the City of Providence, R. I. Among other personal property passing to the executor under the will were shares of stock in the R. J. Reynolds Tobacco Company, which, with declared dividends unpaid, were valued at $115,634.50. The R. J. Reynolds Tobacco Company is a corporation, created under the laws of the State of New Jersey. It has an office in the State of North Carolina and two-thirds or more of all of its tangible property is located in the State. None of the shares of stock belonging to George Briggs were at the time of his death, or at any time while he owned them, in the State of North Carolina. However, the Commissioner of Revenue of the State of North Carolina assessed an inheritance tax upon a 66⅔% value of said shares of stock, amounting to $77,089.67, which produced a tax of $2,658.85, and the theory upon which this property was assessed and the tax levied against it was that the shareholder is

the owner of the property of the corporation and the State, which has jurisdiction of any of the corporate property, and had *pro tanto* jurisdiction of his shares of stock.

If the contention of the appellant in the foregoing excerpt is correct, North Carolina had a right to collect the inheritance tax in the above mentioned case from the estate of George Briggs, because two-thirds of all the property of that corporation was located in the State of North Carolina and within its jurisdiction and if the share of stock simply represented the physical property of the corporation, the State of North Carolina was justified in levying the tax. However, this Court, in speaking through Mr. Chief Justice Taft, in discussing this point, said:

> "* * * We cannot concur in this view. *The owner of the shares of stock in a company is not the owner of the corporation's property.* He has a right to his share in the earnings of the corporation, as they may be declared in dividends, arising from the use of all of its property. In the dissolution of the corporation he may take his proportionate share in what is left, after all of the debts of the corporation have been paid and the assets divided in accordance with the law of its creation. But he does not own the corporate property."

After citing and quoting from Van Allen v. Assessors (Churchill v. Utica, 3 Wall. 573, 583, 18 L. Ed. 229, 234), this Court further said in that case:

"The same principle is declared in Jellinik v. Huron Copper Min. Co., 177 U. S. 1, 44 L. Ed. 647, 20 Sup. Ct. Rep. 559, in which it was held that shares of stock in a corporation had a situs in the state creating the corporation so that they were there subject to *mesne* process. It is approved in Farrington v. Tennessee, 95 U. S. 679, 686, 24 L. Ed. 558, 560; in Hawley v. Malden, *supra,* at p. 12 (58 L. Ed. 482, 34 Sup. Ct. Rep. 201, Ann. Cas. 1916C, 842); in Eisner v. Macomber, 252 U. S. 189, 208, 213, 214, 64 L. Ed. 521, 529, 531, 532, 9 A. L. R. 1570, 40 Sup. Ct. Rep. 189; and in Des Moines Nat. Bank v. Fairweather, 263 U. S. 103, 112, 68 L. Ed. 191, 44 Sup. Ct. Rep. 23; Rhode Island Hospital Trust Co. v. Doughton, 270 U. S. 68, 70 L. Ed. 475."

The foregoing pronouncement of this Court so accurately presents the contention of the Commonwealth of Kentucky, and the opinion is so recent, we deem it unnecessary to cite other authority or to make any comment upon this point.

Again on page 27 of appellant's brief, he says:

"It is especially in the imposition of multiple inheritance taxes that the absurdity has been most plainly exposed, but multiple taxation therein has been upheld upon the ground that inheritance taxes were excise taxes and not property taxes, and, consequently, not protected by the 14th Amendment. This doctrine was announced in Magoun v. Illinois Trust & Saving Bank, 170 U. S. 283; Blackstone v. Miller, 188 U. S. 189, and in Wheeler v. Sohmer, 233 U. S. 34; * * *."

When appellant in the above excerpt declares that the above mentioned cases upheld multiple taxation upon the ground that inheritance taxes were excise taxes, and consequently not protected by the 14th Amendment, he certainly ignored the plain declarations of this Court in at least one of these opinions, because Mr. Justice McKenna, in delivering the opinion of this Court in Magoun v. Illinois Trust & Savings Bank, *supra,* said:

> "* * * Our inquiry must be, not what will satisfy the provisions of the State Constitutions, but what will satisfy the rule of the Federal Constitution. The power of the states over successions may be as plenary in the abstract as appellee contends for, nevertheless it must be exerted within the limitations of that Constitution. If the power of devise or of inheritance be a privilege, it must be conferred or regulated by equal laws. * * *
>
> "Is the act open to this criticism? The clause of the 14th Amendment especially evoked is that which prohibits a state denying to any citizen the equal protection of the laws. * * *"

Thus is disclosed in the very heart of this opinion that this Court, in the leading inheritance tax case, enunciated the principle that the privilege of the devising or inheritance of property *must be conferred or regulated by equal laws, under the requirements of the 14th Amendment.*

It is unnecessary to inform this Court that in Magoun v. Illinois Trust & Savings Bank, *supra,* which

is so often referred to as the leading case bearing upon the principles of inheritance law, that the many classifications set out, in the law therein construed, were sustained as being valid under the equal protection clause of the 14th Amendment. The due process of law clause of the 14th Amendment was not raised or decided by the Court in this case.

The case of Blackstone v. Miller, *supra,* brought before this Court the levying of an inheritance tax under the laws of New York upon a transfer by will of certain property of Timothy B. Blackstone, who died domiciled in Illinois, the property transferred being a debt of $10,692.24 due to the deceased by a firm in New York, and the net sum of $4,843,456.72 held on deposit account by the United States Trust Company of New York. The objections to the tax were seasonably made on the ground that all of this property had been taxed in Illinois and as intangible personal property its situs for taxation was in that State at the domicile of the decedent, under whose will the property was transferred and in the State where the will was being administered.

This Court, in speaking through Mr. Justice Holmes, in answering the contention that the New York statute was in contravention to the due process of law clause of the 14th Amendment, said:

> "* * * But it is plain that the transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, but because of the

practical fact of its power over the person of the debtor. The principle has been recognized by this Court with regard to garnishments of a domestic debtor of an absent defendant. * * *

"* * * The fact that two states, dealing each with its own law of succession, both of which the plaintiff in error has to invoke for her rights, have taxed the rights which they respectively confer, gives no cause for complaint on constitutional grounds. * * *"

Now, it is true that Farmers Loan & Trust Co., Executor of Taylor, v. Minnesota, 280 U. S. 204, overruled the principles thus enunciated in the foregoing excerpts in Blackstone v. Miller, *supra*, but this Court never has overruled the principles that were enunciated in the case of Magoun v. Illinois Trust & Savings Bank. Because the evils of multiple taxation were mentioned in Farmers Loan & Trust Company v. Minnesota, *supra,* appellant seems to have reached the conclusion that the sole and principal proposition before this Court in that case was double taxation. The sole and principal proposition before the Court in that case, and which the Court decided, was that intangible personal property could have a situs for taxation in only one State and, when taxed in that State lawfully, it could not be taxed in any other State because no other State had a taxable jurisdiction thereof. Taxation of property of which the State had no jurisdiction was and is in contravention of the "due process of law" clause of the 14th Amendment. Mr. Justice Holmes advanced the theory in Blackstone v. Miller that, al-

though the situs of the property in that case was in Illinois, the fact that New York by its laws rendered a service by enabling the executor to collect from the debtor residing in New York, the debt, this service justified New York in taxing the transfer of the debt from a decedent resident in Illinois; but Farmers Loan & Trust Co. v. Minnesota invalidated this theory and held that the service of the law in enabling the executor to collect a debt from a debtor resident in New York did not give taxing jurisdiction of a transfer of a debt that occurred in Illinois. Now it is significant that while this Court overruled Blackstone v. Miller, it did not overrule Magoun v. Illinois Trust & Savings Bank. The latter case dealt with the problem of classification similar to the case at bar and held the classification justified under the "equal protection clause" of the 14th Amendment, and has never been overruled. We admit that that classification was upon a death transfer tax while the classification in the case at bar is upon a property tax, but the classification in both instances is valid under the 14th Amendment.

Again, on page 28 of his brief, appellant states:

> "The principle at the base of the decision in Farmers L. & T. Co., Ex'r of Taylor v. Minn., applies to taxation of shares at the shareholder's domicile at 100% when the property represented by the shares lies wholly or partly in other states. * * *"

Appellant continues to repeat his error that the share of stock in the hands of the shareholder is the

same property as the tangible property that belongs to corporations. He does not distinguish between the obligation in the nature of a chose in action, to-wit: a share of stock which it has sold, and the physical property of that corporation. He cannot understand that the physical property of the corporation constitutes its assets while a share of stock in the hands of a shareholder is a liability of the corporation, in that it is an obligation upon which it is morally and legally bound to earn and pay to its owner dividends.

Continuing on the same page of his brief, appellant states:

> "Inasmuch as inheritances cannot be taxed except in the state of the decedent's domicile when they consist of intangibles, or at the *locus in quo* when they consist of tangibles, because taxation belongs to the jurisdiction over the property in question—upon the same principle the shares of the shareholder in a corporation cannot *rightly* be taxed at all. * * *"

Appellant at last has given this Court the reason for this suit. He thinks it a crime for Kentucky to collect from him any tax. He honestly believes that Kentucky should exempt his property, but collect taxes from the other fellow to pay the cost of protecting his property. However, in his entangled sophistry he continues with his alleged reason:

> "* * *because to tax them amounts to taxation of property in another jurisdiction, or, at most, cannot properly be taxed in excess of the

ratio or *net* property in the state of the domicile to property situate there and elsewhere."

To illustrate his economic logic, Klein, a resident of Kentucky, owns a note of the face value of $1,000 against Smith, a resident of Tennessee, who is worth $100,000, with all of his property located in Tennessee except $100.00 in Kentucky. The taxing authorities in Kentucky in fixing a valuation of that note can only value it at the ratio that $100.00 of Smith's property in Kentucky bears to his property in Kentucky and elsewhere. Thus, the valuation of a note for $1,000 upon a solvent maker in the hands of Klein would be $0.10. This expresses the value of his patriotism and the full worth of his logic based upon a false premise. As appellant states farther on in this page of his brief, "taxation is something so practical." But if the State of Kentucky should follow the economic method of fixing the valuation of intangible property suggested in his brief, it would deprive Kentucky of any taxing income from more than $500,000,000 in valuation of stock, some of which, like appellant's, pays a dividend of 25%, and the tax thus eliminated would have to be laid upon tangible real and personal property which in the City of Louisville in 1925 bore a State, county, city and school tax of $2.85 on each one hundred dollars of valuation, while his stock only paid 50 cents per one hundred dollars of valuation. He successfully ignores his subject of "Unsoundness of Double or Multiple Taxation," but he makes a masterful plea for "No Taxation on My Property."

D.

**ASSUMING THE PROPRIETY OF TAXING SHARES AND ALSO TAXING THE PROPERTY OF THE CORPORATION, THE STATE OF THE SHAREHOLDER'S DOMICILE HAS NO RIGHT TO ARBITRARILY DISCRIMINATE BETWEEN CORPORATIONS AND ARBITRARILY SELECT THOSE WHOSE STOCKHOLDERS ARE TO BE TAXED AND OMIT TO TAX THE STOCKHOLDERS OF THE OTHERS.**

On page 29 of his brief, appellant states:

> "If we assume, for argument's sake, that the shareholder may still be assessed at 100% regardless of what property, if any, of the corporation may be located within the State of domicile, *it is not within the power of the State to arbitrarily discriminate between corporations in the taxation of their shareholders.* * * *"

We are afraid that appellant has forgotten that the Commonwealth of Kentucky can exercise a few of the attributes of a sovereign within the purview of the 14th Amendment as now construed by the courts. Instead of offering any reason of our own as to the unsoundness of the undescored pronouncement of appellant in the above excerpt, we will place by its side the authoritative announcement of this Court passing upon the powers of a State under the Federal Constitution, as promulgated in the case of Merchant's and Manufacturer's Bank v. Pennsylvania, 167 U. S. 461, 463, 42 L. Ed. 236, wherein this Court upheld a Pennsylvania statute which was attacked on the ground that

the classification was arbitrary, and in speaking for the Court Mr. Justice Brewer said:

> "If it be said that a lack of uniformity renders the statute obnoxious to that part of the 14th Amendment to the Federal Constitution which forbids a state to 'deny to any person within its jurisdiction the equal protection of the laws,' it becomes important to see in what consists the lack of uniformity. It is not in the terms or conditions expressed in the statute, but only in the possible results of its operation. Upon all bank shares, whether state or national, rests the ordinary state tax of 4 mills. To every bank, state and national, and all alike, is given the privilege of discharging all tax obligations by collecting from its stockholders and paying 8 mills on the dollar upon the par value of the stock. If a bank has a large surplus, and its stock is in consequence worth five or six times its par value naturally it elects to collect and pay the 8 mills, and thus in fact it pays at a less rate on the actual value of its property than the bank without surplus, and whose stock is only worth par. So it is possible, under the operation of this law, that one bank may pay at a less rate upon the actual value of its banking property than another; but the banks which do not make this election, whether state or national, pay no more than the regular tax. The result of the election under the circumstances is simply that those electing pay less. But this lack of uniformity in the result furnishes no ground of complaint under the Federal Constitution. Suppose, for any fair reason affecting only its internal affairs, the state

should see fit to wholly exempt certain named corporation from all taxation. *Of course the indirect result would be that all other property might have to pay a little larger rate per cent in order to raise the revenue necessary for the carrying on of the state government, but this would not invalidate the tax on other property, or give any right to challenge the law as obnoxious to the provisions of the Federal Constitution.*"

We should remember that iron-clad, theoretical laws that apply the same tax to every species of property and to every interest in property, regardless of the fact that the interest is remote and contingent, will ofttimes in practice destroy actual uniformity and equality. Taxation is intensely practical, and the pole star that should guide the Legislature in distributing its burdens of taxation is equal justice to the taxpayers, based as nearly as possible upon the earning capacity of his property taxed.

In discussing the practical design of taxing laws, this Court in the case of Pacific Express Co. v. Seibert, 142 U. S. 339, 355, 35 L. Ed. 1035, Mr. Justice Lamar, speaking for this Court, said:

"This court has repeatedly laid down the doctrine that diversity of taxation, both with respect to the amount imposed and the various species of property selected either for bearing its burdens or for being exempt from them, is not inconsistent with a perfect uniformity and equality of taxation in the proper sense of those terms; and that *a system which imposes the same tax upon every species*

*of property, irrespective of its nature or condition or class, will be destructive of the principle of uniformity and equality in taxation and of a just adaptation of property to its burdens."*

In the recent opinion of this Court in the case of Ohio Oil Co. v. Conway, 281 U. S. 146, 74 L. Ed. —— (page 456, Advance Sheets), Mr. Chief Justice Hughes, in discussing the powers of sovereignty of a State in dealing with tax legislation under the 14th Amendment, in speaking for this Court, said:

"* * * but that Amendment imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to schemes of taxation. The state may tax real and personal property in a different manner. *It may grant exemptions.* The state is not limited to *ad valorem* taxation. It may impose different specific taxes upon different trades and professions and may vary the rates of excise upon various products. *In levying such taxes, the state is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. To hold otherwise would be to subject the essential taxing power of the state to an intolerable supervision, hostile to the basic principles of our government and wholly beyond the protection which the general clause of the 14th Amendment was intended to assure.* * * *."

On page 30 of his brief, appellant states:

"By an Act of 1917 the shareholder was not taxed if 25% of the corporation's property was in

Kentucky, and now by the Act of 1924, the shareholder is taxed unless at least 75% of the corporation's property be in Kentucky. The criterion adopted in either case is purely arbitrary. *The only conceivable reason for substituting 75% of property for 25% thereof is that the shareholders of more corporations are reached by the later Statute, whereby the tax-eater gets more money.* * * * "

We are wondering if appellant in the italicized part of the above excerpt is not measuring the corn of the Legislature of Kentucky in his half bushel. The legislative branch of our State government is in session only sixty days every two years unless called in extra session. We have had only two short extra sessions of our Legislature since the adoption of our Constitution in 1891. The Legislature for its services receives only an infinitesimal part of the State's revenue. While they have the power to fix their compensation within the limits of our Constitution, they have been exceedingly modest in fixing that compensation. The Legislature of Kentucky will compare favorably with the Legislature of any State in the Union and we can not conceive the reason for the bitterness in appellant's heart that generated the uncomplimentary remark italicized by us in the above excerpt.

However, the Legislature was confronted with the problem of raising funds to pay the expenses of governmental activities, and building up, conserving and bringing capital into the State. In doing this it at least placed less tax burden upon intangible personal property, as a whole, than was placed upon any other

property. If the appellant had examined the reports of the State Tax Commission for the years 1912-1914, 1917, and 1923, and had given to those reports the careful consideration that we believe the Legislature gave them, we are convinced that his remarks would have been more charitable to our State Legislature.

**An Examination of the Reports of State Tax Commission for 1912-1914, 1917 and 1923. Their Influence upon the Amendments to Section 4088.**

Section 6, on page 10 of the Report Special Tax Commission, State of Kentucky, 1912-1914, under the head of Recommendations, discloses that one of the objects sought to be attained is:

> "To actually raise the assessment of all property to its full cash value."

Upon examination of the Report of the State Tax Commission in 1917, on page 15, we find these significant remarks:

> "* * * We could extend the illustrations at great length, but we give these two because they are representative of all other classes of property. The two classes mentioned are not extreme cases, but represent the average. *Tangible personal property has not been assessed at exceeding 20% of its value,* while intangible personal property has hardly been assessed at all."

To a Legislature desiring to be fair with its taxpayers, desiring to avoid so far as possible the evils of

double taxation, and endeavoring to encourage the investment of capital in corporations that are utilizing the raw products and labor of Kentucky, that are investing a large part of the proceeds from the sale of their capital stock in property located in Kentucky, the above excerpt from the 1917 Report of the State Tax Commission furnishes food for thought and action. We think that the Kentucky Legislature exercised splendid legislative discretion and judgment in 1917, by providing in Section 4088 of the Kentucky Statutes, that the stock of all corporations that actually paid taxes on 25% of their total assets to Kentucky should be exempt from taxation. In considering the above report, the Legislature realized that throughout Kentucky in 1917, tangible personal property was being assessed at not exceeding 20% of its value; it realized that when a corporation had in Kentucky and paid taxes upon 25% of its total tangible assets, it was paying to Kentucky an amount of taxes substantially equal to the taxes that natural persons were paying on property equal in value to the total property owned by the corporation, and, in fairness to the stockholders of Kentucky, the Legislature exempted the shares of stock in the hands of the shareholder from taxation when it was disclosed that the corporation which issued the stock had paid taxes on 25% of its assets to Kentucky. One reason for this classification is that the corporations could not practice undervaluation of their tangible property as successfully as was being practiced by natural persons.

By this exemption, provided for in the 1917 Act, the Legislature sought to render justice to the corporations and stockholders who were paying taxes substantially equal to the taxes other property was paying, which was of equal value to the assets of the corporations. The shareholders in other corporations could not complain, because the tax levied upon their shares of stock was only a nominal amount in comparison with the taxes that were paid upon tangible property. This is true, although you take into consideration the fact that the tax on shares were paid on a valuation equal to 100% of its true value, because that stock was exempted from the payment of all taxes to *county, municipal, school and other taxing districts,* and this exemption was not granted to tangible property.

The creation of two classes of stock for the purpose of taxation, taxing one class because it was issued by a corporation that paid taxes upon less than 25% of its tangible property, and exempting the other class because the stock was issued by a corporation that paid taxes to Kentucky on 25% or more of all their tangible assets is not only justified as a classification by the principles enunciated in Kidd v. Alabama, *supra,* but under the recent case of Stebbins v. Riley, 268 U. S. 137, 141, 69 L. Ed. 884, wherein Mr. Justice Stone, in speaking for this Court on the powers of a State in classifying property for taxation, said:

> "* * * It may discriminate between property which has not borne its full share of taxation

*in the testator's lifetime* and other property passing to the same class of transferees. * * *"

This opinion was delivered in April, 1925, and if this Honorable Court believed then that a State was justified in making a discrimination between the transferees in inheritance tax, because a part of those transferees received property from a decedent *who in his lifetime had paid a certain tax, upon the property received,* and the other class of transferees *who received property from a decedent who failed to pay a certain tax on his property in his lifetime,* there can be no question but that Kentucky *was justified* in making a distinction between shares of stock that are issued by two corporations, one of which pays taxes on 25% or more of its tangible property, and the other which pays taxes upon less than 25% of its tangible property to the State, and in a classification that gives equality of treatment to both foreign and domestic corporations.

Again, this amendment of 1917 was fair because it prevented fraud. Under Section 4088, Kentucky Statutes, before the 1917 amendment, all a corporation, domestic or foreign, had to do to exempt all its shares of stock in hands of stockholders from taxation was to invest one dollar in property in Kentucky and report it for taxation. The amendment closed the door to this possible fraud.

Again, if appellant had made an examination of Table 3 on pages 70, 71, and 72 of the Report of Kentucky State Tax Commission for 1923, he would have discovered the reason why the 1924 Legislature by

Chapter 116 of the Acts for that year raised the percentage of property upon which a corporation was required to pay taxes, because its share of stock in the hands of shareholders could be exempt from taxation from 25% to 75%. This table discloses that the total assessed valuation of all the property of Kentucky in 1916 was $902,304,436, and that the valuation of this property had been continuously increased until in 1923, its total valuation was $2,205,588,007. Between the years 1916 and 1923, the valuation of the property of Kentucky had been *trebled,* and, in order to require the corporations operating in this State to be entitled to and have their stock exempted from taxation, since natural persons had *trebled* the valuation upon their property, it was nothing but fair that the corporations should be required to pay taxes upon at least three-fourths of their corporate assets before their shares should be entitled to exemption. So our Legislature, in its policy of gradually increasing the valuation of property to the ultimate goal of 100% of its true valuation, and, at the same time, requiring corporations to only pay the same tax that is paid by natural persons on property of the same true valuation, in 1924 increased the percentage of corporate property to be taxed from 25% to 75%, before the shares could be exempted, for the simple reason that natural persons had increased the valuation of their property to 75% of its true value, whereas, in 1917, they only valued their property at 20% of its true valuation.

In the facts disclosed in these three tax reports, we find the basis of the legislative judgment and discretion, and that judgment discloses an earnest effort by Kentucky to be fair in providing a law of taxation applicable to corporations and to natural persons, in an instance where the corporation owned property and a private person owned a remote and contingent interest therein, and as was said by Mr. Justice Stone in Stebbins v. Riley, *supra,* when passing upon a similar point:

> "* * * It is enough that the classification is reasonably founded in the 'purposes and policies of taxation.' Watson v. State Comptroller, 254 U. S. 122, 65 L. Ed. 170, 41 Sup. Ct. Rep. 43. It is not open to objection *unless it precludes the assumption that the classification was made in the exercise of legislative judgment and discretion.* Campbell v. California, *supra.*"

In our study of the power of the State to classify property for the purpose of taxation, by reason of appellant's charge of discrimination in Section 4088, Kentucky Statutes, we have been very much impressed with the case of Citizens' Telephone Company v. Fuller, Auditor, 229 U. S. 320-322, 57 L. Ed. 1206. In this case the State of Michigan had levied a tax against telephone companies, and the validity of this tax was being assailed because the law contained a provision which exempted all telephone companies from the payment of the tax, whose gross receipts within the State for the year ending June 30th did not exceed five hun-

dred dollars. It was the contention of the Citizens' Telephone Company in that case that a dollar's worth of property in a telephone company, whose gross receipts were less than five hundred dollars in a year, should pay the same tax that a dollar in a company whose gross receipts were greater than five hundred dollars. But this Court in that instance, sympathetically looked behind the cold letter of the law, which was apparently an arbitrary discrimination between the property of the companies whose gross receipts were less than five hundred dollars and the same or similar property when owned by a company whose gross receipts were greater than five hundred dollars, and sought the purpose of the classification. In doing so, it discovered that the companies as a whole whose gross receipts were less than five hundred dollars were non-profit earning corporations, engaged in the telephone business for the mutual convenience of their stockholders, and in the State of Michigan those corporations whose gross receipts were greater than five hundred dollars were, as a whole, profit-earning corporations which were operating telephone lines in that State for commercial purposes only, and in laying down the rules that govern a state under the 14th Amendment, in classifying property for taxation, in this case, Mr. Justice McKenna, speaking for this Court: said:

> "* * * Granting the power of classification, we must grant government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous.

> Keeney v. New York, 222 U. S. 536, 56 L. Ed. 305, 38 L. R. A. (N. S.) 1139, 32 Sup. Ct. Rep. 105. The state is not bound by any rigid equality. This is the rule; its limitation is that it *must not be exercised in 'clear and hostile discriminations between particular persons and classes.'* "
>
> Citizens' Telephone Company v. Fuller, Auditor, 229 U. S. 320-322, 57 L. Ed. 1206.

As heretofore remarked, the Kentucky Legislature in fixing the amount of the tax to be paid by shares of stock in a corporation which does not pay taxes upon 75% of its tangible assets to the State, showed no indication of hostility, because the tax upon the stock is only nominal when compared to the burden which tangible property has to bear, the tangible property not only paying to the State the same tax that is required of the stock, but also bearing the burden of county, municipal, school and other district taxes from which the shares of stock has been exempted.

**Double Taxation upon the Property Within its Jurisdiction Owned by Residents of Kentucky is Not a Violation of Either the Due Process of Law or Equal Protection Clauses of the 14th Amendment to the Federal Constitution.**

The appellant has made his complaint as to the invalidity of Section 4088, Kentucky Statutes, under our Constitution, to the Courts of Kentucky, and in each instance his contention has been denied. The Court of Appeals of Kentucky spends a large part of its time in construing statutes and in determining whether or

not they are valid under our State Constitution. The learned Commissioner who wrote the opinion of the Appellate Court in the instant case is an ex-Chief Justice of that Court and has served on it many years, either as Chief Justice, Associate Justice, or Commissioner. His opinion, written under the supervision of our Appellate Court, is authoritative and binding on all parties concerned, so far as the Constitution and statutes of Kentucky are involved. We have earnestly endeavored to meet each of the objections appellant has made to Section 4088, Kentucky Statutes, under the provisions of the 14th Amendment to our Federal Constitution.

However, before closing this brief we desire to call the Court's attention to additional authority upon the power of the State to levy double or multiple taxes upon property when both the property and the owner are within and subject to the taxing jurisdiction of the State.

Volume 1, Cooley Taxation, Fourth Edition, Section 245, page 517, states:

> "* * * the position that it is not *double taxation* to impose one tax upon the property of a corporation, or upon its capital stock, and another tax upon the shares of the capital stock in the hands of the individual stockholders has been vigorously attacked. Some courts have held that it is double taxation. *On the other hand, most of the state courts, and the Supreme Court of the United States, have taken a different view, and have held that the shares of the capital stock of a corporation*

> *in the hands of the stockholders, though representing their interest in the property of the corporation, are, for the purposes of taxation, distinct from the property of the corporation,* and *from its capital stock in its hands, and that to tax both—the former to the corporation, and the latter to the stockholders—is not double taxation."*

But, for the sake of argument, admit that the rule is otherwise. So long as the State remains within the limits of reason as to the total tax levied and manifests no hostile or arbitrary discriminations to persons or property in the classification, what are the powers of the State?

In the case of St. Louis Southwestern Railway Company v. State of Arkansas, *ex rel.* Hal L. Norwood, Attorney General, 235 U. S. 350, 59 L. Ed. 265, Mr. Justice Pitney, in speaking for this Court, said:

> "Nothing in the 14th Amendment imposes any ironclad rule upon the states with respect to their *internal taxation,* or *prevents them from imposing double taxation,* or *any other form of unequal taxation,* so long as the inequality is not based upon arbitrary distinctions. * * * "

The long list of authorities cited by Mr. Justice Pitney immediately after the above excerpt, is sufficient evidence that the principle enunciated by him in the foregoing excerpt had long been one that had been repeatedly endorsed by this Court.

Again, in the case of Interstate Busses Corporation v. William H. Blodgett, 276 U. S. 243, 245, 72 L. Ed. 551, Mr. Justice Stone, in speaking for this Court, said:

> "* * * Appellant plainly does not establish discrimination by showing merely that *the two statutes are different in form or adopt a different measure or method of assessment,* or *that it is subject to three kinds of taxes while intrastate carriers are subject only to two or to one.* * * *"

Thus this Court definitely disposed of the question of multiple taxation.

Describing the powers of the State as to double taxation, Mr. Justice Holmes, in speaking for this Court in the case of Ft. Smith Lumber Co. v. Arkansas, *ex rel.* John D. Arbuckle, Attorney General, 251 U. S. 532, 64 L. Ed. 396, said:

> "The objection to the taxation as double may be laid on one side. *That is a matter of state law alone. The 14th Amendment no more forbids double taxation than it does doubling the amount of a tax,* short of confiscation or proceedings unconstitutional on other grounds. * * *"

In the recent case of Carley & Hamilton, *et al.,* v. Snook, etc., 281 U. S. 66, 74 L. Ed. 250 (Advance Sheets, p. 250, and on page 253 thereof), Mr. Justice Stone said:

> "The objection that the petitioners should not be required to pay the challenged fees because they are already paying the city license tax is but the familiar one, often rejected, *that a state may not, by different statutes, impose two taxes upon the same subject-matter, although, concededly, the total tax, if imposed by a single taxing statute, would not transgress the due process clause.* * * *"

The large number of cases cited in support of this pronouncement disclose that this declaration is no new doctrine. While many other decisions announcing the same principles could be cited, the opinions referred to above, together with others cited in this brief, are so plain and recent that we deem is unnecessary to burden this Court with other citations.

In making his contention as to double or multiple taxation, appellant seems to be relying upon the case of Farmers' Loan & Trust Company, as Sole Surviving Executor, etc., v. State of Minnesota, 280 U. S. 204, 74 L. Ed. ——, and the case of Safe Deposit and Trust Company of Baltimore, Maryland, v. Commonwealth of Virginia, 280 U. S. 83, 74 L. Ed. ——. It will be observed that the question before the Court in each of these cases was the situs for taxation and whether two states could levy an inheritance tax upon the transfer of the same property. But when this Court determined that ordinarily the situs for intangible property is at the domicile of the owner and limited the taxation of the transfer of that property from the dead to living hands to the state where the transfer occurred, it simply meant that the transfer of intangible personal property shall hereafter be taxed only in one state under the same rule as tangible personal property. We do not believe that the question in the instant case was before this Court in either of those cases and the mentioning of double or multiple taxation was only incidental.

**THE CASE OF LOUISVILLE GAS & ELECTRIC COMPANY v. CLELL COLEMAN IS NOT DECISIVE OF THE CASE AT BAR.**

When the case at bar was before the Court of Appeals of Kentucky, appellant earnestly insisted that the case of Louisville Gas & Electric Company v. Clell Coleman, 277 U. S. 32, 72 L. Ed. 770, was decisive of this case, but the Klein case is so apparently and conclusively different from the Louisville Gas & Electric Company case that the Court of Appeals, in speaking through Commissioner Hobson, in its opinion remarked, "But this Court is unable to see that it has any application." And, continuing, it said:

> "That case seems to rest upon the idea that long time mortgages are made by corporations and short time mortgages are made by the poor, whose credit is not good, and that the statutes taxed the corporations and exempted from taxation individuals."

After quoting the above excerpt from the opinion of the Court of Appeals, appellant, on page 38 of his brief, then remarks:

> "This Court certainly said nothing in the Coleman case to indicate that its decision rested upon the ground that the long-time mortgages were made by corporations and short-time mortgages by the poor, and that the statute was void for taxing corporations and exempting individuals; nor indeed did this Court hold that the statute taxed corporations and exempted individuals."

The foregoing insinuation against the Court of Appeals of Kentucky and Commissioner Hobson, by appellant in his brief, is unfair, because the opinion in the Klein case, in neither the excerpt quoted from that opinion nor any other part of it states or suggests that the decision of this Court in the case of Louisville Gas & Electric Co. v. Coleman, *supra,* "rested upon the ground that the long-time mortgages were made by corporations and short-time mortgages by the poor" or "that the statute was void for taxing corporations and exempting individuals." Neither did the opinion charge that this Court held "that the statute taxed corporations and exempted individuals." The excerpt from the opinion, when construed fairly, only undertook to state what the Legislature of Kentucky, in adopting the mortgage recording tax, attempted to do, and that was to exempt the short term mortgages, which are usually executed by those in financial distress, and to tax the long term mortgages, which are usually executed by corporations to a non-resident trustee as the basis for issuing a debenture bond, payable to bearer, with interest coupons attached. These were the two classes that the Legislature and the courts locally recognized in the passage of the mortgage recording act and its construction by the Court. Locally the difference in the two classes was as significant as the difference between day and night, and Commissioner Hobson in the quoted excerpt was only stating a fact that

was known and understood by practically every professional and business man of Kentucky.

Further, the fact that the notes, to secure which the short term mortgages were executed, did not escape taxation and, upon the other hand, the debenture bonds for which the long term mortgages were executed did escape taxation, was known by both the Legislature and courts of Kentucky.

The differences in the two classes were not disclosed to this Court of record when the mortgage recording tax was before it for adjudication. The committee in the Legislature that reported this bill for adoption did not disclose in its official report the basis for the classification that it made in that taxing act, and the Commonwealth of Kentucky was unable to lay before this Court the basis of the classification and its relation to the objects of the legislation. This Court had before it nothing but the cold letter of the act and it appeared to be arbitrary, and it so held.

If the Commonwealth of Kentucky could have placed before this Court the real basis for the classification, we believe that the decision of the Court would have been entirely different. Our reason for this statement is the fact that in the case of Citizens' Telephone Co. v. Fuller, *supra,* this Court had before it an act that on its face was clearly as arbitrary as the provisions in the Mortgage Recording Act of Kentucky.

In the case of Citizens' Telephone Co. v. Fuller, *supra*, the State of Michigan had levied a tax upon telephone companies, but the act that authorized the levy

contained a provision that exempted all telephone companies from the tax whose gross receipts for the year were less than five hundred dollars. The validity of the act was attacked because it was contended that a dollar's worth of property in a company whose gross receipts were less than five hundred dollars was not required to pay the same tax that a dollar in a telephone company whose gross receipts in a year were more than five hundred dollars.

In that case, Michigan was able to put in the record the facts that the telephone companies in Michigan whose income was less than five hundred dollars were, as a class, non-profit companies, operated for the mutual benefit of those that owned the stock in the corporation, and that the telephone companies whose incomes were greater than five hundred dollars were, as a class, corporations operated for commercial purposes; and it was the intention of the Legislature to tax only the profit-earning corporation. The ability of the State of Michigan to place these facts in the record enabled this Court to look behind the cold letter of the Act and discover the real basis for the classification and with these facts before it, it sustained the validity of the Michigan Act as in all probability it would have sustained the Mortgage Recording Act of Kentucky if the facts which were the basis of the classification in the later case had been disclosed in the record.

There is another distinction between the case of Louisville Gas & Electric Co. and the case at bar. In the former case, the Legislature placed the short term

mortgages in the exempted class because they were executed to secure the payment of notes upon which Kentucky realized a property tax and it placed the long term mortgages in a class to be taxed because they were executed to secure the payment of a debenture bond, which escaped the payment of a property tax to Kentucky, and the Legislature was seeking, by a privilege tax, to indirectly tax the owners of the debenture bonds, because the owners thereof were escaping the payment of a property tax thereon. The collection of a property tax on the notes or the debenture bonds held by the mortgagee or the failure to collect a property tax on all those properties was not the proper basis for the classification attempted, because it was not related to the object of the legislation, which was the collection of revenue by a privilege tax upon the right of a mortgagee to record his mortgage.

Section 4088, Kentucky Statutes, deals with a different proposition. A corporation owns and has possession of physical assets. The shareholders in that corporation own a remote and contingent interest in the same property. Section 4088, Kentucky Statutes, exempts the shareholder from taxation upon his share of stock, provided the corporation issuing the share had paid to Kentucky taxes upon 75% of its tangible property, because the corporation by that payment is paying a tax substantially equal to the tax that natural persons pay upon property of equal value. The tax that is paid by the corporation upon the physical assets, the tax that the stock is exempted from paying,

are both property taxes. The basis of the classification is grounded in property tax and is related to the object of the legislation which is the collection of revenue by a property tax, and brings the instant case within the limits of permitted classification under the 14th Amendment to the Federal Constitution.

**IF THE EXEMPTION IN SECTION 4088, KENTUCKY STATUTES, IS INVALID, IT DOES NOT RELIEVE APPELLANT FROM THE OBLIGATION OF PAYING THE TAX COMPLAINED OF.**

The main complaint of appellant in this case is that the exemption that is granted to a certain class of stockholders in Section 4088, Kentucky Statutes, is invalid. He states that this exemption is granted on an arbitrary classification. If this is true and the exemption is eliminated, then all stockholders will be required to pay the tax, and we cannot discover any advantage that would come to appellant by reason of invalidating the exemption under the 14th Amendment. This Court would not undertake to invalidate the whole revenue measure because the exemption was invalid.

The importance of this proposition is manifest when you take into consideration that Section 4088 as it now appears in the Kentucky Statutes had its origin in the Act of the Legislature which constitutes Chapter 11 of the Acts of 1917. The Legislature at that time undertook to reform the revenue laws of Kentucky so as to harmonize them with the amendment to Section 171 of our present Constitution, which was ratified by the people at the November, 1915, regular

election. Section 4088, Kentucky Statutes, is a part of Chapter 11 of the Acts of 1917. Chapter 11 consists of eleven sections. Section 3 of that chapter as amended by the Act of 1924, constitutes Section 4088, Kentucky Statutes. Under Chapter 11 of the 1917 Acts, all *ad valorem* taxes are levied upon all property of Kentucky and Section 3 thereof grants exemption from taxation of shares of stock in the hands of the shareholder, provided the corporation issuing the stock had listed 25% of all of its tangible assets for taxation in Kentucky, and this Section 3 is now Section 4088, Kentucky Statutes. Chapter 11 of the Acts of 1917 superseded all previous acts as to *ad valorem* taxes and specifically repeals them. The changing of the percentage of property of the corporation that is taxed from 25% to 75% in 1924 is simply an amendment to Chapter 11 of the Acts of 1917, which chapter is copied in full on page 110 of the Appendix attached hereto.

It is our contention that if you strike down Section 4088 of the Kentucky Statutes as an invalid exemption, all of the other provisions embraced in Chapter 11 of the Acts of 1917 will remain in full force and effect and under its remaining sections appellant will be required to pay the tax complained of, because, under Chapter 11 with Section 3 (Section 4088, Kentucky Statutes) eliminated, all stock in the hands of the shareholder will be subject to the *ad valorem* tax therein provided.

The United States Circuit Court of Appeals for the Eighth Circuit in the case of Chicago, Milwaukee &

St. Paul Railway Company v. Westby, 178 Fed. 619, 17 L. R. A. (N. S), 105, clearly stated the rules as to when the valid parts of a partly invalid statute would be sustained. It said the indispensable conditions of such a result are:

> "(1) That the constitutional part and the unconstitutional part are capable of separation so that each may be read and may stand by itself (Baldwin v. Franks, 120 U. S. 679, 685, 686, 30 L. Ed. 766, 768, 769, 7 Sup. Ct. Rep. 656, 763;
>
> "(2) That the unconstitutional part is not so connected with the general scope of the law as to make it impossible, if it is stricken out, to give effect to the apparent intention of the Legislature in enacting it; and
>
> "(3) That the insertion of words or terms is not necessary to separate the constitutional part from the unconstitutional part and to give effect to the former only."

Under these rules thus laid down by the United States Circuit Court of Appeals for the Eighth Circuit, even if Section 4088 is invalidated, the judgment of the Court of Appeals should be affirmed, because with Section 4088 of the Kentucky Statutes eliminated, appellant owes the tax.

In this connection, we feel it our duty to direct this Court's attention to the fact that the 1924 Session of the Legislature of Kentucky repealed, amended and reenacted all the sections of Chapter 11 of the Acts of 1917 by the adoption of an act that is embraced in Chapter 116 of the 1924 Acts of Kentucky. In keeping

with our contention that if the exemption is invalid the balance of the Act as amended by 1924 stands, we wish to emphasize Sections 11 and 13 of Chapter 116 of the Acts of 1924. For the convenience of the Court we quote Section 11, as follows:

> "Section 11. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional, the decisions of the courts shall not affect or impair any of the remaining provisions of this act. It is hereby declared as a legislative intent that this act would have been adopted had such unconstitutional provisions not been included therein."

The Legislature has made it clear to the Courts that if any provision of Chapter 11 of the Acts of 1917 as amended by Chapter 116 of the Acts of 1924 be held unconstitutional it was the legislative intent that this act would have been adopted, regardless of the fact that one or more provisions be held by the Courts to be invalid. Thus the rules of statutory construction become unnecessary.

Section 13 of the Act is as follows:

> "Section 13. Whereas, the present State revenue and taxation laws impose an unequal burden of taxation upon real estate, and it is necessary for an immediate equalization of the distribution of the burden of taxation upon the various classes of property in this Commonwealth, an emergency is declared to exist, and this act shall become a law

and effective upon its passage and approval by the Governor."

Thus the Legislature discloses that the 1924 amendment to Chapter 11 of the 1917 Act was adopted to equalize the burden of taxation. After the assessment of the property of individuals had been trebled it would have been unfair to other propertyholders to have permitted shares of stock to be exempted when the corporation paid taxes to Kentucky on 25% of its tangible assets. So they raised the percentage of property to be taxed to 75%.

## CONCLUSION.

We believe that the purpose of the Legislature in creating the classification disclosed in Section 4088, Kentucky Statutes, was,

1. The requirement of all property to pay some taxes;
2. The avoidance, so far as possible, of double taxation;
3. The encouragement of Kentucky capitalists to invest in shares of stock in corporations which are investing the proceeds from the sale of their capital stock in property in Kentucky and conducting their business in this State, utilizing our raw products and labor, which is an exercise of the powers that are permitted under the 14th Amendment,

and that the judgment of the Court of Appeals was right; and we respectfully pray an affirmance of that judgment.

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M. B. HOLIFIELD,
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# APPENDIX.

## THE RECOMMENDATIONS.

**The following chapter, "The Recommendations," copied from report of the Special Tax Commission of the State of Kentucky, 1912-14, and immediately preceding Chapter 1 in that Report.**

The recommendations and the reasons therefor are fully set forth in the following pages of this report. They are finally embodied in drafts of several proposed bills. They may be summarized as follows:

1. It is proposed to establish a permanent Central Tax Commission in charge of all taxation in the State and responsible for the just administration of the tax laws, which shall specifically:

*a.* Have and exercise strict supervision over the local assessment officers, instruct and guide them in all their work, and after the term of office of the County Assessors, recently elected has expired, to organize a corps of expert assessors, under civil service rules, to take the place of the one hundred and twenty County Assessors who now work without supervision, instruction or training. Create larger assessment districts by the combination of counties into groups, so that assesors shall have work enough to occupy them the year round.

*b.* Take the place of the present State Board of Equalization.

*c.* Exercise control over the local boards of superviors and to guide them in their work.

*d.* Do the work of assessing railroads, franchises, bank stock and other property now assessed by ex-officio boards.

*e.* Look after the license taxes, inheritance taxes and all other taxes.

2. To change the law so that the initiative in finding and assessing the property shall lie with the Assessor and the State Tax Commission, making it less necessary to depend upon the taxpayer's statement, although that statement much simplified in form is still retained.

3. To provide that the Assessor shall be adequately equipped with tools to work with, especially with adequate maps, so that all property shall be assessed and equitably assessed.

4. To provide that the work of completely revaluing and assessing of real estate shall be done but once every four years, with a view to:

*a.* Greater thoroughness.

*b.* Saving of expense.

5. To amend the law relative to assessments made at present by the State Board of Valuation and Assessments (to be succeeded by the State Tax Commission) for three purposes:

*a.* To correct certain infelicities in the language of the statutes which have tied the hands of the Board and led to serious litigation.

*b.* Increase the powers of the assessing officers, so that the assessments may be more equitable and just.

*c.* To extend the franchise tax to *all* franchises.

6. *To actually raise the assessment of all property up to its full cash value.*

7. As soon as purpose six is effected, to limit the powers of local boards to fix the tax rates, so that the taxpayer can feel assured that he will not be over-taxed, but such limits may be exceeded by special vote of the people.

8. To so amend the laws relative to the collection of taxes that there can be a proper audit, and to make it practically impossible for dishonest officials to collect money under the guise of taxes, which never goes into the public coffers.

9. To abolish the "tax sharks," by giving the delinquent taxpayer ample opportunity to redeem his property, and then if he still fails to pay, turning the property over to the State, so that the profit, if any, resulting shall be for the benefit of all the people and not for the enrichment of a few (often non-resident) sharpers.

10. Ultimately to comply with the mandate of the people expressed through their approval of the constitutional amendment, by exempting public bonds, and making securities, or, in other words, mortgages, bonds and other *choses in action,* a special class of property to be taxed by a method which will bring them out of hiding. How soon this can be done depends on the decision in the case now pending before the Court of Appeals.

11. To remove all necessity for revenue agents, and abolish them.

12. To revise entirely all of those chapters of the revenue law which relate to the taxation of property in general to the following ends:

*a.* To insert in their proper place the new provisions, and

*b.* To make the arrangement logical and clear.

The old law has been patched onto at various times in such fashion that it now contains some contradictions, many useless repetitions, and is badly arranged.

## MATTERS DEEMED OF INTEREST.

**"Matter Deemed of Interest" is a part of a Report of Kentucky State Tax Commission for 1917, and the part quoted commences on page 13 and ends on page 15 of that Report.**

When the State Tax Commission was organized the work of preparing the necessary blanks, books, instructions and data was immediately commenced. It has been made the duty of the State Tax Commission to prepare all necessary schedule and other blanks relating to the assessment of property. This was a great task and was accomplished under great pressure, as many of the blanks had to be prepared without delay. We found that in the past taxpayers had hardly been requested to assess their property for taxation, and we believed that much could be accomplished if they were at least asked to assess their property. We found, what everyone knew, that only a small percentage of property, less than one-third, was assessed for taxation in the State. The value of the taxable property in the State of Kentucky is not less than $3,500,000,000. The assessed value of all property in the State was a little more than $1,000,000,000. No property has been really "assessed" for taxation except that which was required to be assessed by the State Board of Valuation and Assessment. All other property on which taxes were paid was simply "listed" by the taxpayer with the county assessor. The State of Kentucky and the various counties were, in effect, supported, so far as they were supported at all, by voluntary donations, and each donor sought to contribute a little less than his nieghbor owning property of the same value. This led to inequalities and iniquities that made it impossible for a conscientious taxpayer to assess his property in the State, as the burden of supporting the government fell too heavily upon him. Under the old plan the finances of the State have not increased as the necessity

for expenditures have increased. The result is that Kentucky has not made the progress which she would have made if the State and the county had adopted a system of taxation which would have brought in more revenue in a just and an equitable way. The trouble with the State is not that it spends too much money, but rather that it spends too little. A State or county cannot get the things that are necessary to make it a good place in which to live unless it is willing to pay for such things. The State should always have money to spend when the thing for which it is spent is of more value to the people than the money so expended, and no money should ever be spent by the State unless the things for which it is spent is of more value than the money thus expended. Following this rule, the State would cease to spend some thousands of dollars that is now expended, but it would spend many more thousands to get the things which are necessary to make it a place where a progressive citizenship would delight to live.

The old plan of taxation penalized the man who had regard for the law and rewarded the man who ignored the law. The more honest a man was in making his assessment, the greater the penalty imposed upon him, and the greater his disregard for the law, the greater his reward.

Comparing counties with counties, we found that in some the average assessed value of real estate was as low as 30% of its actual value, while in some it was as high as 80%. The taxpayers in the highest assessed counties paid into the State treasury $2.66⅔ every time the taxpayers in the lowest assessed counties paid into the State treasury $1.00 on property of the same actual value. The average assessed value of mules per head was as low as $36 in some counties, while in others the average was as high as $107. For every dollar paid into the State treasury by the lowest assessed counties on this class of property, the highest assessed counties paid into the State treasury $3.00 on property of the same value. We could extend the illustrations at great length, but we give these two because they are representa-

tive of all other classes of property. The two classes mentioned are not extreme cases, but represent the average. *Tangible personal property has not been assessed at exceeding 20% of its value, while intangible personal property has hardly been assessed at all.*

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## TABLE No. 3.

**Excerpts from Table No. 3, excerpt for 1916 appearing on page 70, and excerpt for 1923 on page 22, of the 6th Annual Report, Kentucky State Tax Commission for 1923.**

Assessment for the year 1916, showing the amount of taxes paid by various kinds of property, also percentage as paid by each.

| | | | | | |
|---|---|---|---|---|---|
| Assessed value of bank deposits | $ 10,235,846 | @ | 55c | $ 56,297.15 or | 1.13% |
| Assessed value of intangibles | 74,066,756 | @ | 55c | 407,367.15 or | 8.21% |
| Assessed value of lands | 382,110,547 | @ | 55c | 2,101,608.00 or | 42.35% |
| Assessed value of town lots | 315,571,224 | @ | 55c | 1,735,641.73 or | 34.97% |
| Assessed value of tangible personalty | 120,320,068 | @ | 55c | 661,760.34 or | 13.34% |
| | $902,304,436 | @ | 55c | $4,962,674.37 or | 100. % |

Assessment for the year 1923, showing the amount of taxes paid by various kinds of property, also percentage as paid by each.

| | | | | | |
|---|---|---|---|---|---|
| Assessed value of bank deposits | $ 272,201,630 | @ | 10c | $ 272,201.63 or | 3.44% |
| Assessed value of intangibles | 330,516,419 | @ | 40c | 1,322,065.68 or | 16.70% |
| Assessed value of lands | 772,137,740 | @ | 40c | 3,088,550.96 or | 39.03% |
| Assessed value of town lots | 461,223,988 | @ | 40c | 1,844,895.95 or | 23.32% |
| Assessed value of live stock | 31,102,086 | @ | 10c | 31,102.09 or | .40% |
| Other tangible personal property | 338,406,144 | @ | 40c | 1,353,624.58 or | 17.11% |
| | $2,205,588,007 | | | $7,912,440.89 or | 100. % |

# TABLE No. 3.

## Table No. 3, on pages 82 to 85, inclusive, of the 11th Annual Report, Kentucky State Tax Commission for 1928.

**A tabulation of the assessment for the years 1917 to and including 1928, showing the assessed valuation of the various kinds of property and the amount of revenue derived from each for the years named above, and the percentage of the burden as borne by each kind of property for each of said years.**

Assessment for the year 1917, showing the amount of taxes paid by various kinds of property, also percentage as paid by each.

| | | | |
|---|---|---|---|
| Assessed value of bank deposit | $ 11,177,196 @ 55c | $ 61,474.58 or | 1.21% |
| Assessed value of intangibles | 68,750,880 @ 55c | 378,129.84 or | 7.45% |
| Assessed value of lands | 391,694,806 @ 55c | 2,154,321.43 or | 42.46% |
| Assessed value of town lots | 322,140,632 @ 55c | 1,771,773.48 or | 34.92% |
| Assessed value of tangible personalty | 128,692,967 @ 55c | 707,811.32 or | 13.96% |
| | $922,456,481 @ 55c | $5,073,510.65 or | 100. % |

Assessment for the year 1918 showing the amount of taxes paid by various kinds of property, also percentage as paid by each.

| | | | |
|---|---|---|---|
| Assessed value of bank deposits | $ 179,143,180 @ 10c | $ 179,143.18 or | 3.17% |
| Assessed value of intangibles | 246,348,379 @ 40c | 985,393.52 or | 17.46% |
| Assessed value of lands | 529,390,432 @ 40c | 2,117,561.73 or | 37.52% |
| Assessed value of town lots | 341,592.377 @ 40c | 1,366,369.51 or | 24.21% |
| Assessed value of live stock | 50,314,861 @ 10c | 50,314.86 or | .89% |
| Other tangible personal property | 236,332,001 @ 40c | 945,328.00 or | 16.75% |
| | $1,583,121,230 | $5,644,110.80 or | 100. % |

Assessment for the year 1919 showing the amount of taxes paid by various kinds of property, also percentage as paid by each.

| | | | |
|---|---|---|---|
| Assessed value of bank deposits | $ 209,363,034 @ 10c | $ 209,363.03 or | 2.89% |
| Assessed value of intangibles | 364,095,157 @ 40c | 1,456,380.63 or | 20.42% |
| Assessed value of lands | 660,226,382 @ 40c | 2,640,905.53 or | 37.03% |
| Assessed value of town lots | 367,902,150 @ 40c | 1,471,608.69 or | 20.58% |
| Assessed value of live stock | 74,693,209 @ 10c | 74,693.20 or | 1.05% |
| Other tangible personal property | 321,166,759 @ 40c | 1,284,666.32 or | 18.03% |
| | $1,997,446,691 | $7,137,617.31 or | 100. % |

Assessment for the year 1920, showing the amount of taxes paid by various kinds of property, also percentage as paid by each.

| | | | |
|---|---|---|---|
| Assessed value of bank deposits | $ 260,919,320 @ 10c | $ 260,919.32 or | 3.6 % |
| Assessed value of intangibles | 275,486,887 @ 40c | 1,101,947.55 or | 15.4 % |
| Assessed value of lands | 731,798,075 @ 40c | 2,927,192.30 or | 40.9 % |
| Assessed value of town lots | 367,283,463 @ 40c | 1,549,133.85 or | 21.6 % |
| Assessed value of live stock | 67,279,693 @ 10c | 67,270.69 or | .9 % |
| Other tangible personal property | 311,544,307 @ 40c | 1,246,177.22 or | 17.6 % |
| | $2,034,302,745 | $7,152,640.93 | |

Assessment for the year 1921, showing the amount of taxes paid by various kinds of property, also percentage as paid by each.

| | | | |
|---|---|---|---|
| Assessed value of bank deposits | $ 284,161,828 @ 10c | $ 284,161.83 or | 3.65% |
| Assessed value of intangibles | 321,148,823 @ 40c | 1,284,595.29 or | 16.54% |
| Assessed value of lands | 760,159,888 @ 40c | 3,040,639.55 or | 39.15% |
| Assessed value of town lots | 412,874,991 @ 40c | 1,651,499.97 or | 21.27% |
| Assessed value of live stock | 55,818,452 @ 10c | 55,818.45 or | .72% |
| Other tangible personal property | 362,341,756 @ 40c | 1,449,367.92 or | 18.67% |
| | $2,196,505,738 | $7,766,082.11 or | 100. % |

Assessment for the year 1922 showing the amount of taxes paid by various kinds of property, also percentage as paid by each.

| | | | |
|---|---|---|---|
| Assessed value of bank deposits | $ 270,121,440 @ 10c | $ 270,121.00 or | 3.6 % |
| Assessed value of intangibles | 309,704,155 @ 40c | 1,238,816.62 or | 16.7 % |
| Assessed value of lands | 757,444,109 @ 40c | 3,029,776.43 or | 40.8 % |
| Assessed value of town lots | 438,132,922 @ 40c | 1,752,531.69 or | 23.6 % |
| Assessed value of live stock | 31,682,831 @ 10c | 31,682.83 or | .4 % |
| Other tangible personal property | 276,087,129 @ 40c | 1,104,348.52 or | 14.9 % |
| | $2,083,172,586 | $7,427,277.53 or | 100. % |

Assessment for the year 1923, showing the amount of taxes paid by various kinds of property, also percentage as paid by each.

| | | | |
|---|---|---|---|
| Assessed value of bank deposits | $ 272,201,630 @ 10c | $ 272,201.63 or | 3.44% |
| Assessed value of intangibles | 330,516,419 @ 40c | 1,322,065.68 or | 16.70% |
| Assessed value of lands | 772,137,740 @ 40c | 3,088,550.96 or | 39.03% |
| Assessed value of town lots | 461,223,988 @ 40c | 1,844,895.95 or | 23.32% |
| Assessed value of live stock | 31,102,086 @ 10c | 31,102.09 or | .40% |
| Other tangible personal property | 338,406,144 @ 40c | 1,353,624.58 or | 17.11% |
| | $2,205,588,007 | $7,912,440.89 or | 100. % |

Assessment for the year 1924, showing the amount of taxes paid by various kinds of property, also percentage as paid by each.

| | | | | |
|---|---|---|---|---|
| Assessed value of bank deposits | $ 317,319,996 | @ 10c | $ 317,320.00 or | 3.94% |
| Assessed value of intangibles | 396,829,363 | @ 50c | 1,984,146.81 or | 24.69% |
| Assessed value of lands | 779,408,115 | @ 30c | 2,338,224.35 or | 29.09% |
| Assessed value of town lots | 498,900,710 | @ 30c | 1,496,702.13 or | 18.63% |
| Assessed value of live stock | 33,314,828 | @ 50c | 166,574.14 or | 2.08% |
| Assessed value of other tangible property | 346,733,788 | @ 50c | 1,733,668.89 or | 21.57% |
| | $2,372,506,790 | | $8,036,836.32 or | 100.00% |
| Total real estate | 1,278,308,825 | @ 30c | 3,834,926.46 or | 47.72% |
| Total personal property | 1,094,197,965 | | 4,201,909.86 or | 52.28% |

Assessment for the year 1925, showirg the amount of taxes paid by various kinds of property, also percentage as paid by each.

| | | | | |
|---|---|---|---|---|
| Assessed value of bank deposits | $ 341,035,080 | | $ 341,035.08 | 3.9 % |
| Assessed value of intangibles | 501,403,120 | | 2,507,015.60 | 29. % |
| Assessed value of lands | 757,519,751 | | 2,272,559.25 | 26.3 % |
| Assessed value of town lots | 553,448,799 | | 1,160,346.39 | 19.2 % |
| Assessed value of live stock | 19,083,225 | | 95,416.13 | 1.1 % |
| Assessed value of other tangible personal property | 352,747,808 | | 1,763,739.04 | 20.5 % |
| | $2,525,237,783 | | $8,640,111.49 | 100.00% |
| Total real estate | $1,310,968,550 | @ 30c | $3,932,905.65 | |
| Total personal property | 1,214,269,233 | | 4,707,205.84 | |

Assessment for the year 1926, showing amount of taxes paid by various kinds of property, also percentage of the tax as paid by each.

| | | | | |
|---|---|---|---|---|
| Assessed value of bank deposits | $ 334,975,190 | @ 10c | $ 334,975.19 | 3.76% |
| Assessed value of intangibles | 528,729,976 | @ 50c | 2,643,649.88 | 29.68% |
| Assessed value of lands | 748,817,906 | @ 30c | 2,246,453.72 | 25.22% |
| Assessed value of town lots | 603,525,400 | @ 30c | 1,810,576.20 | 20.33% |
| Assessed value of live stock | 25,098,981 | @ 50c | 125,494.91 | 1.41% |
| Assessed value of tangible personal property | 349,125,557 | @ 50c | 1,745,627.78 | 19.60% |
| | $2,590,273,010 | | $8,906,777.68 | 100. % |
| Total real estate | $1,352,343,306 | | $4,057,029.92 | |
| Total personal property | 1,237,929,704 | | 4,849,747.76 | |
| | $2,590,273,010 | | $8,906,777.68 | |

Assessment for the year 1927, showing amount of taxes paid by various kinds of property, also percentage of the tax as paid by each.

| | | | |
|---|---|---|---|
| Assessed value of bank deposits | $ 349,146,540 @ 10c | $ 349,146.54 | 3.95% |
| Assessed value of intangibles | 490,549,380 @ 50c | 2,452,746.90 | |
| Assessed value of bank shares | 75,228,316 @ 50c | 376,141.58 | 31.85% |
| Assessed value of lands | 734,405,418 @ 30c | 2,203,216.25 | 24.80% |
| Assessed value of town lots | 630,357,076 @ 30c | 1,891,071.23 | 21.29% |
| Assessed value of live stock | 26,681,803 @ 50c | 133,409.02 | 1.50% |
| Assessed value of tangible personalty | 295,060,027 @ 50c | 1,475,300.14 | 16.61% |
| | $2,601,428,560 | $8,881,031.65 | 100. % |

Assessment for the year 1928, showing amount of taxes paid by various kinds of property, also percentage of the tax as paid by each.

| | | | |
|---|---|---|---|
| Assessed value of bank deposits | $ 360,214,474 @ 10c | $ 360,214.47 | 3.74% |
| Assessed value of intangibles | 495,506,610 @ 50c | 2,477,533.05 | |
| Assessed value of bank shares | 76,436,507 @ 50c | 382,182.53 | 29.65% |
| Assessed value of lands | 728,925,897 @ 30c | 2,186,777.69 | 22.68% |
| Asessed value of town lots | 650,455,979 @ 30c | 1,951,367.94 | 20.24% |
| Assessed value of live stock | 28,861,102 @ 50c | 144,305.51 | 1.50% |
| Assessed value of tangible personal property | 427,913,533 @ 50c | 2,139,567.66 | 22.19% |
| | $2,768,314,102 | $9,641,948.85 | 100.00% |

Tabulation showing the percentage of State revenue as borne by each class of property from the year 1926 to and including 1928.

| | 1917 | 1918 | 1919 | 1920 | 1921 | 1922 |
|---|---|---|---|---|---|---|
| Lands | 42.46% | 37.52% | 37.03% | 40.9% | 39.15% | 40.8% |
| Town lots | 34.92% | 24.21% | 20.58% | 21.6% | 21.27% | 23.6% |
| Intangible property | 7.45% | 17.46% | 20.42% | 15.4% | 16.54% | 14.3% |
| Tangible property | 13.96% | 16.75% | 18.03% | 17.6% | 18.67% | 16.7% |
| Bank deposits | 1.21% | 3.17% | 2.89% | 3.6% | 3.65% | 3.6% |
| Live stock | ..... | .89% | 1.05% | .9% | .72% | .4% |

| | 1923 | 1924 | 1925 | 1926 | 1927 | 1928 |
|---|---|---|---|---|---|---|
| Lands | 39.03% | 29.09% | 26.30% | 25.22% | 24.80% | 22.68% |
| Town lots | 23.32% | 18.66% | 19.20% | 20.33% | 21.29% | 20.24% |
| Intangible property | 16.70% | 24.69% | 29. % | 29.68% | 31.85% | 29.65% |
| Tangible property | 17.11% | 21.57% | 20.5 % | 19.60% | 16.61% | 22.19% |
| Bank deposits | 3.44% | 2.08% | 3.9 % | 3.76% | 3.95% | 3.74% |
| Live stock | .40% | 3.94% | 1.16% | 1.41% | 1.50% | 1.50% |
| | | | | | | 100.00% |

## CHAPTER 11.

**Chapter 11, appearing on pages 44 to 53, inclusive, of Acts of the General Assembly of the Commonwealth of Kentucky, passed at the Extraordinary Session of the General Assembly, which was begun in the City of Frankfort, Ky., on Wednesday, February 14, 1917, and ended Wednesday, April 25, 1917, Section 3 thereof being Section 4088, Carroll's Kentucky Statutes 1915 Edition, Chapter 108, p. 2070.**

AN ACT relating to revenue and taxation, providing an annual tax upon property subject to taxation in this State, fixing the rate thereof, distributing said tax to various departments and State institutions, providing manner and means of assessing and listing corporate property, and shares of stock, designating what classes of property shall be subject to local taxation, fixing time for collecting taxes on omitted personal property in certain cases, requiring record of assignment of evidences of indebtedness secured by mortgages in certain cases, requiring fiduciaries to file inventories of trust property, conferring power on taxing authorities to examine books and accounts of fiduciaries, requiring payment of taxes before final discharge, providing an additional tax for recording certain mortgages, making failure to pay taxes a bar to enforcement of indebtedness in certain cases, fixing penalties and repealing existing statutes.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

§ 1. **Annual Taxes—How Divided.** An annual tax of forty (40) cents upon each one hundred dollars ($100.00) of value of all property directed to be assessed for taxation, as hereinafter provided, shall be paid by the owner, person or corporation assessed. Of the aggregate amount of tax realized by all assessments, 21½ fifty-fifths shall be for the ordinary expenses of the government, 26 fifty-fifths for the support of the common schools, 2 fifty-fifths for the use of the sinking fund, ½ of one fifty-fifth for the University of Kentucky, and 5 fifty-fifths for the State road fund. The tax herein provided for the University of Kentucky shall be in lieu of the tax provided by an act entitled: "An act

for the benefit of the Agricultural and Mechanical College," approved April 29th, 1880. The tax herein provided for the State road fund shall be in lieu of the tax provided by an act entitled: "An act to create and establish a system of public State roads and to provide for the construction and maintenance thereof," approved March 24, 1914.

§ 2. **Property to be Assessed in Name of Corporation—Penalty for Failure to Report.** The property of all corporations, except where differently provided by law, shall be assessed in the name of the corporation in the same manner as that of a natural person, except that, when legally called on, the chief officer shall report under oath a full statement of the property of such corporation for taxation, and, for a failure, shall be subject to the penalties provided by law for a similar failure by a natural person in listing his own property.

§ 3. **Exemption of Stockholders.** The individual stockholders of a corporation, at least one-fourth of whose total property is taxable in Kentucky, shall not be required to list their shares for taxation so long as the corporation pays taxes on all its property in Kentucky (including the corporate franchise when the franchise is required to be assessed), provided the shareholder furnishes satisfactory proof to the taxing authorities that at least one-fourth of the total property of such corporation is taxed in Kentucky.

§ 4. **Property Subject to Local Taxation.** All property subject to taxation for State purposes as provided in Section 4020, Kentucky Statutes, shall be subject also to taxation in the county, city, school, or other taxing district, in which same has a taxable situs, except the following classes of property which shall be subject to taxation for State purposes only.

(1) Farm implements and farm machinery owned by a person actually engaged in farming and used in his farm operations.

(2) Machinery and products in course of manufacture of persons, firms, or corporations, actually engaged in

manufacturing, and their raw material actually on hand at their plants for the purpose of manufacture.

(3) Money in hand, notes, bonds, accounts and other credits, whether secured by mortgage, pledge or otherwise, or unsecured. Shares of stock not relieved from assessment under Section 3 of this act; provided, however, that nothing in this section shall forbid local taxation of franchises of corporations or of the shares of banks, trust companies, or combined banks and trust companies doing business in Kentucky, or domestic life insurance companies.

And provided, further, every State bank and trust company incorporated under the laws of this Commonwealth, and every National bank doing business therein and located in any county, city, town or taxing district in this Commonwealth shall make to the assessing officer of the county, city, town or taxing district a report showing the following facts, to-wit: The name and post-office address of the bank or trust company; the names of the president, cashier and board of directors thereof; the number of shares of stock, and the par and market value of each share; the amount of surplus fund and undivided profits; the amount of its deposits; the amount of cash on hand; the amount of bonds and other securities held by it; the amount loaned on mortgages and the amount of its loans and discounts; the amount of value of all real estate situated in this Commonwealth, held and owned by the bank or trust company on the first day of September of each year; and such other information as may be required. The assessing officer of the county, city, town or taxing district wherein any trust company, State and National bank is situated, shall assess the shares of such trust company, State and National bank for taxation for State, county, city, town and taxing district purposes. Each bank and trust company shall be entitled to have deducted from the total valuation placed on its shares by said board the assessed value of its real estate in this State. It shall be the duty of the trust company and banks to list with the county assessor of each county, and with the assessing of-

ficer in each city, town and taxing district its real estate and pay the taxes thereon to the sheriff and to the collecting officer of each city, town and taxing district, and such officer shall make out and return the assessment to the proper authorities of the county, city, town or taxing district, at the same time and manner as prescribed by law for the return of the assessment of personal property therein.

The equalization, collection, penalties and laws relating thereto, now provided by law for other personal property in the county, city, town or taxing district, shall apply in like manner to the collection of the taxes herein provided for: Any county, city, town or taxing district, not now having the right to collect such taxes by suit, is hereby authorized and empowered so to do. Nothing herein shall be construed to repeal or amend Chapter thirty-three of the Acts of 1904, approved March 18, 1904, entitled, "An act to amend the revenue laws of the cities of the first class so as to carry into effect the amendment of Section 181 of the present Constitution."

§ 5. **Report of Mortgage Assignments Required— Penalty.** Every bank, trust company or combined bank and trust company doing business in Kentucky shall on or before November 1st of each year file with the Tax Commission a report verified by the oath of its president, vice-president or cashier showing as of September 1st:

(a) A list of the notes, bonds or other evidences of indebtedness secured by mortgage or other recorded instrument standing in its name of record, which it has assigned during the preceding year without transferring same of record, the amount of each, and the name and address of the person to whom each was assigned; provided, that where the name and address is given of the transferee holding same on September 1st of any year, any previous transfers of said securities during that year need not be furnished.

(b) A list of the mortgages assigned of record to it during the preceding year with its knowledge or consent,

where it has not become the absolute owner of the debt secured thereby, standing in its name on September 1st, the amount of each of such mortgages and the name and address of each of such assignors; provided, any mortgages assigned to it as aforesaid during any year and paid and released of record prior to September 1st need not be included in such report.

Provided: however that the reports required under clause (a) or clause (b) need not include either sales or pledges from one bank, trust company or combined bank and trust company to another bank, trust company, or combined bank and trust company, or notes or obligations secured by any recorded instrument executed to a bank, trust company or a combined bank and trust company, in which the obligations secured by said instrument or divided among estates or accounts in charge of said bank, trust company, or combined bank and trust company, and regularly and properly entered on the records of said trust company, bank or combined bank and trust company.

Provided, further, the provisions of this section shall not apply to mortgages made by corporations to trustees to secure bond issues made by them in the regular course of business.

The information thus obtained shall be communicated by the Tax Commission so the Assessor and Board of Supervisors of the respective counties in which the true owners of such debts reside. Failure to file such reports shall be punishable by a fine of not less than fifty nor more than one hundred dollars and each day's delay or failure to file such report shall constitute a separate offense. Wilful false statement in such reports shall be punishable as false swearing.

Any person, firm or corporation which shall transfer or assign of record any mortgage note, or bond or other evidence of indebtedness, secured by any recorded instrument, for the sole purpose of evading the taxes thereon, shall be guilty of a misdemeanor and punishable by fine of not less

than one hundred ($100.00) nor more than one thousand ($1,000.00) dollars.

§ 6. **Ommitted Property—Penalty—Limitation.** When any money in hand, notes, bonds, accounts, or other credits, secured or unsecured, or shares of stock liable to assessment shall in any one year be omitted from assessment, under the provisions of this act, it may at any time not later than ten (10) years thereafter, be assessed retrospectively in the manner provided by Sections 4258 to 4267, Kentucky Statutes, except that, in addition to the penalty prescribed by those sections, a penalty of one hundred per cent. of the amount of the taxes and interest at six per cent. per annum from the time the taxes should have been paid, shall be recovered. Said additional penalty and interest shall be paid into the State Treasury.

Provided, further, that after September 1st, 1917, no action shall be commenced nor proceeding taken on behalf of the State or any county, city, town, or taxing district to assess for taxation for any period prior to September 1st, 1917, any personal property described in this section required to be listed for taxation which had theretofore been omitted or which may be claimed to have been omitted, if such property has been so listed for taxation as of September 1st, 1917; nor shall any pending action, prosecution, or proceeding be amended so as to include any such personal property listed as of said date.

§ 7. **Failure to List Choses in Action a Bar to Collection.** In addition to the penalties provided in the preceding section, failure to list any note or bond shall be a bar to any action upon the same in any court and may be pleaded as a complete defense. But the holder thereof may at any time pay all taxes, penalties and accrued interest and thereupon be relieved from the defense above provided.

§ 8. **Fiduciaries—Their Reports and Examination of Their Records.** Every executor, administrator, guardian, trustee, trustee in bankruptcy, receiver, or other person acting in a fiduciary capacity, shall when required, file with

the Tax Commission a sworn inventory showing in detail the amount and character of personal property which has come to his hands. Such inventory need not be filed with the Tax Commission if it has been filed as a public record in the court in which the fiduciary qualifies.

Said Tax Commission is hereby given express authority to examine the books and accounts of administrators, executors, curators, trustees and others acting in a fiduciary capacity. No such fiduciary shall receive a final discharge until he has satisfied the court settling his accounts that all taxes against the estate have been paid.

§ 9. **Mortgage Recording Tax.** The word "mortgage" as used in this section shall include any instrument creating or evidencing a lien of any kind upon property given or taken as security for debt and shall include vendor's liens and executory contracts for the sale of property under which the vendee is entitled to the possession thereof.

A tax of twenty (20) cents is hereby imposed upon each one hundred dollars ($100.00) or fraction thereof of indebtedness which is, or may be, in any contingency, secured by any mortgage of property in this State, which mortgage shall be lodged for record after this act goes into effect, where the indebtedness does not mature within five years. If any such mortgage includes property outside of the State, such tax shall be imposed upon such proportion of the whole debt secured thereby as the value of the property in this State included therein bears to the whole of the property included therein. The county clerk first receiving such instrument for record shall determine the amount of such tax from affidavits of the mortgagor or its officers as to such proportionate value or from other satisfactory evidence.

If a mortgage is made to a mortgagee in trust to secure the payment of bonds or other obligations to be issued thereafter, a statement may be incorporated therein of the amount and description of such obligations already issued or to be issued forthwith, and the tax to be paid on filing

such mortgage for record or registration shall be computed upon the amount so stated. Such statements shall be binding and conclusive upon all persons claiming through or under the mortgage, and no additional obligations shall be issued or certified by the trustee until the additional tax thereon shall have been paid and the receipt of the proper county clerk issued therefor, and recorded upon the margin of the record of said mortgage.

If any such mortgagor shall issue or if any such trustee shall certify or aid in the issuance of any such obligations without the payment of the tax as herein provided, they shall each be subject to a penalty of five times the amount of such tax that should have been paid.

The tax imposed by this act shall be paid to the clerk of the county court in whose office said mortgage is first lodged for record, at or before the time of lodging same for record. The clerk shall thereupon endorse his receipt upon said instrument, and such receipt shall be recorded with said instrument, and shall be conclusive proof of the payment of said tax, and shall authorize the further record of such instrument in any other county, without repayment of such tax. The form of such receipt shall be in substance: "Recording tax hereon of ..... dollars paid."

The clerk on or before the tenth day of each month transmit to the Auditor the amount of such taxes collected by him within the preceding calendar month, less the amount of his commissions now allowed him on collections of revenue. And the entire revenue from the mortgage recording tax shall be credited to the Sinking Fund.

The recording tax herein provided shall be in addition to the annual tax for State purposes provided in the preceding sections of this act; provided, however, the recording tax herein provided shall be the only tax paid on mortgages beneficially owned by persons or corporations not resident in this State. Provided, however, the provisions of this section shall not apply to mortgages executed to building and loan associations.

§10. **[Railroads to Furnish Copy of Reports to Tax Commission].** That all railroads operating in Kentucky shall furnish to the State Tax Commission of Kentucky upon its request, a true and correct copy of all printed or written report or reports to their stockholders of net income or earnings for the year in which the assessment is made, also will furnish to said Commission upon its request a true and correct copy of all their printed or written reports of net income or earnings furnished to the Interstate Commerce Commission for the year in which the assessment is made, and upon a failure of any such railroad company operating in Kentucky to comply with the provisions of this act it shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than five hundred dollars and not more than ten thousand dollars and any officer of such company knowingly making false statements or statements relative to said report or reports shall be subject, upon conviction, to the penalties provided under the felony laws of this State.

§11. **Repealing Clause.** Sections 4019, 4085, 4088, 4092a, 4092b, 4092c, and 4092d, Kentucky Statutes, Carroll's 1915 Edition, are hereby repealed. All other laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

[Catch-title in brackets inserted by compiler.]

Approved May 2, 1917.

## CHAPTER 116.

**Chapter 116, appearing on pages 402 to 415, inclusive, of Acts of the General Assembly of the Commonwealth of Kentucky, passed at the Regular Session of the General Assembly which was begun in the City of Frankfort, Ky., on Tuesday, January 8, 1923, and ended Wednesday, March 19, 1924, Section 3 thereof being Section 4088, Kentucky Statutes, Carroll's 1930 Edition, Chapter 108, p. 2086.**

AN ACT to amend and re-enact Section 1 of Chapter 11 of the Acts of the Extraordinary Session of the General Assembly of 1917, as amended and re-enacted by Section 1 of Chapter 4 of the Acts of the General Assembly of 1918; and to repeal Section 3 of Chapter 11 of the Acts of the Extraordinary Session of the General Assembly of 1917; and to amend and re-enact Section 4 of Chapter 11 of the Acts of the Extraordinary Session of the General Assembly of 1917, as amended and re-enacted by Chapter 18 of the Acts of the General Assembly of 1922; and to amend and re-enact Section 5 of Chapter 11 of the Acts of the Extraordinary Session of the General Assembly of 1917; and to amend and re-enact Section 6 of Chapter 11 of the Acts of the Extraordinary Session of the General Assembly of 1917; and to repeal Section 1 of Chapter 65 of the Acts of the General Assembly of 1920; and to amend and re-enact Section 1 of Chapter 10 of the Acts of the Extraordinary Session of the General Assembly of 1917, as amended and re-enacted by Section 1 of Chapter 83 of the Acts of the General Assembly of 1920; and to amend and re-enact Sections 1 and 3 of Chapter 4 of the Acts of the Extraordinary Session of the General Assembly of 1917; being an Act relating to revenue and taxation, providing an annual tax upon property subject to taxation in this State, fixing the rate thereof, distributing said tax to various departments and State institutions, providing manner and means of assessing and listing corporate property and shares of stock, and shares in building and loan associations, designating what classes of property shall be subject to local taxation, fixing time for collecting taxes on omitted personal property in certain cases, requiring record of assignment of evidence of indebtedness secured by mortgage in certain cases, requiring fiduciaries to file inventories of trust property, conferring power on taxing authorities to examine books and accounts of fiduciaries, requiring payment of taxes before final discharge, providing an additional tax for recording certain mortgages, making failure to pay taxes a bar to enforcement of indebtedness in certain cases, fixing penalties and repealing existing statutes.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

§ 1. That section 1 of chapter 11 of the Acts of the Extraordinary Session of the General Assembly of 1917, approved May 2, 1917, as amended and re-enacted by section 1 of chapter 4 of the Acts of the General Assembly of 1918, approved March 5, 1918, be amended by repealing said section 1 of chapter 11 of the Acts of the Extraordinary Session of the General Assembly of 1917, and also by repealing section 1 of chapter 4 of the Acts of the General Assembly of 1918, and inserting in lieu thereof the following section, so that when said sections are amended by substituting and re-enacting the following section in lieu thereof, the same shall read as follows:

Section 1. Annual Taxes—How Divided. An annual ad valorem tax for state purposes of thirty (30c) cents upon each one hundred ($100.00) dollars of value of all real estate directed to be assessed for taxation, as provided by law, and fifty (50c) cents upon each one hundred ($100.00) dollars of value of all other property directed to be assessed for taxation, as provided by law, shall be paid by the owner, person or corporation assessed; except a tax at the rate of one-tenth of one (1%) per cent shall be paid annually upon the amount of deposits in any bank, trust company, or combined bank and trust company, organized under the laws of this State, or in any national bank of this State, as now provided by law; and also except building and loan associations incorporated under the laws of this State, and making loans to members only, which associations shall be assessed in the manner and at the rate now set forth in chapter fourteen of the Acts of Extraordinary Session of General Assembly of nineteen hundred and seventeen. Of the aggreate amount of tax realized by all assessments under the thirty (30c) cent rate, plus the aggregate amount of tax realized by all assessments of money in hand, notes, bonds, accounts and other credits, whether secured by mortgage, pledge or otherwise, or unsecured,

franchise and shares of stocks, twenty and seven-tenths thirtieths shall be used for the support of the common schools; one and fifteen hundredths thirtieths thereof plus four-sixteenths of the inheritance taxes for the support and erection of buildings for the University of Kentucky at Lexington, Kentucky; seventy-hundredths thirtieths plus one-sixteenth of the inheritance taxes for the support and erection of buildings for the Eastern Kentucky State Normal School and Teachers College at Richmond, Kentucky; seventy-nine hundredths thirtieths plus three-sixteenths of the inheritance taxes for the support and erection of buildings for the Western Kentucky State Normal School and Teachers College at Bowling Green, Kentucky; sixty hundredths thirtieths for the support and erection of buildings for the Murray State Normal School at Murray, Kentucky; sixty-hundredths thirtieths for the support and erection of buildings for the Morehead State Normal School at Morehead, Kentucky; and three and forty-five hundredths thirtieths for the construction, reconstruction, maintenance and repair of roads and highways, and for the payment of the interest on and for the creation of a sinking fund for the liquidation of State bonds issued for roads and other purposes; and eight-sixteenths of the inheritance taxes, plus the aggregate amount of all other State revenue realized from every other source not mentioned above, shall be credited to the general fund for the use of the ordinary expenses of the government, and the Auditor of Public Accounts will make distribution of said tax in accordance with the said apportionment at the end of each month. The tax herein provided for the University of Kentucky is in lieu of the tax provided by an act entitled: "An Act for the benefit of the Agricultural and Mechanical College," approved April twenty-ninth, one thousand eight hundred and eighty, and the annual appropriation now made for the University of Kentucky under the provisions of section four thousand five hundred and thirty-five-b, Kentucky Statutes, edition one thousand nine hundred and fif-

teen; the annual appropriation now made for the University of Kentucky under the provisions of subsection four of section four thousand six hundred and thirty-six-b, Kentucky Statutes, edition one thousand nine hundred and fifteen; the annual appropriation now made for the University of Kentucky by the act which became a law March twenty-sixth, one thousand nine hundred and four, acts one thousand nine hundred and four, chapter one hundred and twenty; the annual appropriation now made for the University of Kentucky under the provisions of subsection five of section four thousand six hundred and thirty-six-c, Kentucky Statutes, edition one thousand nine hundred and fifteen. The tax herein provided for the Western Kentucky State Normal School and Teachers College and Eastern Kentucky State Normal School and Teachers College shall be in lieu of the appropriation made for the support of said schools in subsections twenty-nine, thirty-five and thirty-six of section four thousand five hundred and thirty-five-a and in section four thousand five hundred and thirty-five-b of the Kentucky Statutes, edition one thousand nine hundred and fifteen. The tax herein provided for the University of Kentucky and the normal schools shall be paid monthly, when and as collected, to the treasurers of these institutions in the amount set forth in this section, and shall be used by the University of Kentucky and the normal schools for their maintenance and support, and when sufficient sums shall have accumulated in the treasuries thereof, it may be used for the erection of buildings and the purchase of land and equipment. The tax herein provided for the State road fund shall be in lieu of the tax provided by an act entitled: "An Act to create and establish a system of public State roads and to provide for the construction and maintenance thereof."

§ 2. That section 3 of chapter 11 of the Acts of the Extraordinary Session of the General Assembly of 1917, approved May 2, 1917, be amended by repealing said section 3 and inserting in lieu thereof the following, so that

when said section is amended by substituting and re-enacting the following in lieu thereof, the same shall read as follows:

Section 3. The individual stockholders of a corporation, at least seventy-five (75%) per cent of whose total property is taxable in Kentucky, shall not be required to list their shares for taxation so long as the corporation pays taxes on all its property in Kentucky (including the corporate franchise when the franchise is required to be assessed), provided the shareholder furnishes satisfactory proof to the taxing authorities that at least three-fourths of the total property of such corporation is taxed in Kentucky.

§ 3. That section 4 of chapter 11 of the Acts of the Extraordinary Session of the General Assembly of 1917, approved May 2, 1917, as amended and re-enacted by chapter 18 of the Acts of the General Assembly of 1922, approved March 20, 1922, be amended by repealing said section 4 of chapter 11 of the Acts of the Extraordinary Session of the General Assembly of 1917, and also by repealing chapter 18 of the Acts of the General Assembly of 1922, and inserting in lieu thereof the following section, so that when said sections are amended by substituting and re-enacting the following section in lieu thereof, the same shall read as follows:

Section 4. All property subject to taxation for State purposes shall be subject also to taxation in the county, city, school, or other taxing district in which same has a taxable situs, except the following classes of property which shall be subject to taxation for State purposes only:

(1) Farm implements and farm machinery owned by a person actually engaged in farming and used in his farm operation.

(2) Live stock, domestic fowls, capital stock of building and loan associations and bank deposits.

(3) Machinery and products in course of manufacture, of persons, firms, or corporations, actually engaged in

manufacturing, and their raw material actually on hand at their plants for the purpose of manufacture and unmanufactured agricultural products in the hands of the producer or in the hands of any agent or agency of the producer to which said products have been conveyed or assigned for the purpose of sale by the producer. Provided that persons, firms or corporations actually engaged in the printing, publication and distribution of a newspaper or newspapers, or operating a job printing plant, shall be deemed to be actually engaged in manufacturing within the meaning of this act.

(4) Money in hand, notes, bonds, accounts and other credits, whether secured by mortgage, pledge, or otherwise, or unsecured, and shares of stock; provided, however, that nothing in this section shall forbid local taxation of franchises of corporations or of the shares of banks, trust companies, or combined banks and trust companies doing business in Kentucky, or domestic life insurance companies.

And provided, further, every State bank and trust company incorporated under the laws of this Commonwealth, and every national bank doing business therein and located in any county, city, town or taxing district in this Commonwealth shall make to the State Tax Commission and to the assessing officer of the county, city, town or taxing district, on or before August first of each year, a report showing the following facts, to-wit: The name and post office address of the bank or trust company; the names of the president, cashier and board of directors thereof; the number of shares of stock, and the par and market value of each share; the amount of capital stock paid in; the amount of surplus fund and undivided profits, and the amount of real estate charged off which has not been actually sold and transferred; the amount of its deposits; the amount of cash on hand; the amount of bonds and other securities held by it; the amount loaned on mortgages and the amount of its loans and discount; the amount of value of all real estate situated in this Commonwealth, held and

owned by the bank or trust company on the first day of July of each year; and such other information as may be required. The assessing officer of the county, city, town or taxing district wherein any trust company, State and national bank is situated, shall assess the shares of such trust company, State and national bank for taxation for State, county, city, town or taxing district purposes. Each bank and trust company shall be entitled to have deducted from the total valuation placed on its shares the assessed value of its real estate in this State. It shall be the duty of the trust company and banks to list with the county tax commissioner of each county, and with the assessing officer in each city, town and taxing district its real estate and pay taxes thereon to the sheriff and to the collecting officer of each city, town and taxing district, and such officer shall make out and return the assessment to the proper authorities of the county, city, town or taxing district, at the same time and manner as prescribed by law for the return of the assessment of personal property therein.

And provided, further, that every association, company or corporation incorporated or organized under the laws of this Commonwealth, or doing business in this Commonwealth, and whose stock is liable to assessment and taxation under section 2 of this act, except banks, trust companies, or combined banks and trust companies doing business in Kentucky, and domestic life insurance companies, shall on or before the first day of August of each year make a true and correct report to the State Tax Commission, verified by its president, secretary, treasurer or other chief officer, giving the names and addresses of residents of Kentucky who hold its shares of stock and outstanding bonds as of July first previous thereto, and also the transfer of any of its stocks or bonds by residents of Kentucky to non-residents within thirty days previous to July first. The contents of the reports mentioned in this section shall be confidential, and shall not be divulged except for the purpose of securing the assessment of same for taxation.

The equalization, collection, penalties and laws relating thereto, now provided by law for other personal property in the county, city, town or taxing district, shall apply in like manner to the collection of the taxes herein provided for. Any county, city, town or taxing district, not now having the right to collect such taxes by suit, is hereby authorized and empowered so to do. Nothing herein shall be construed to repeal or amend chapter thirty-three of the Acts of 1904, approved March 18, 1904, entitled, "An Act to amend the revenue laws of the cities of the first class so as to carry into effect the amendment of section 181 of the present Constitution.

§ 4. That section 5 of chapter 11 of the Acts of the Extraordinary Session of the General Assembly of 1917, approved May 2, 1917, be amended by repealing said section 5 of chapter 11 and inserting in lieu thereof the following section, so that when said section is amended by substituting and re-enacting the following section in lieu thereof, the same shall read as follows:

Section 5. Report of Mortgage Assignments Required —Penalty. Every bank, trust company or combined bank and trust company doing business in Kentucky shall on or before August first of each year file with the Tax Commission a report verified by the oath of its president, vice-president or cashier, showing as of July first:

(a) A list of the notes, bonds or other evidences of indebtedness secured by mortgage or other recorded instruments standing in its name of record, which it has assigned during the preceding year without transferring same of record, the amount of each, and the name and address of the person to whom each was assigned; provided, that where the name and address is given of the transferee holding same on July first of any year, any previous transfers of said securities during that year need not be furnished.

(b) A list of the mortgages assigned of record to it during the preceding year with its knowledge or consent, where it has not become the absolute owner of the debt se-

cured thereby, standing in its name on July first, the amount of each of such mortgages and the name and address of each of such assignors; provided, any mortgages assigned to it as aforesaid during any year and paid and released of record prior to July first need not be included in such report.

Provided, however, that the reports required under clause (a) or clause (b) need not include either sales or pledges from one bank, trust company or combined bank and trust company to another bank, trust company or combined bank and trust company, or notes or obligations secured by any recorded instrument executed to a bank, trust company or a combined bank and trust company, in which the obligations secured by said instrument or divided among estates or accounts in charge of said bank, trust company or combined bank and trust company, and regularly and properly entered on the records of said trust company, bank or combined bank and trust company.

Provided, further, the provisions of this section shall not apply to mortgages made by corporations to trustees to secure bond issues made by them in the regular course of business.

The information thus obtained shall be communicated by the Tax Commission to the county tax commissioner and board of supervisors of the respective counties in which the true owners of such debts reside. Failure to file such reports shall be punishable by a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00), and each day's delay or failure to file such report shall constitute a separate offense. Wilful false statement in such reports shall be punishable as false swearing.

Any person, firm or corporation which shall transfer or assign of record any mortgage note or bond or other evidence of indebtedness, secured by any recorded instrument, for the sole purpose of evading the taxes thereon, shall be guilty of a misdemeanor and punishable by fine of

not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00).

§ 5. That section 6 of chapter 11 of the Acts of the Extraordinary Session of the General Assembly of 1917, approved May 2, 1917, be amended by repealing said section 6 and inserting in lieu thereof the following section, so that when said section is amended by substituting and re-enacting the following section in lieu thereof, same shall be read as follows:

Section 6. Omitted Property—Penalty—Limitation. When any money in hand, notes, bonds, accounts or other credits, secured or unsecured, or shares of stock liable to assessment shall in any one year be omitted from assessment, as provided by law, it may at any time not later than ten years thereafter be assessed retrospectively in the manner provided by section 4258 to 4267, Kentucky Statutes, except that, in addition to the penalty prescribed by those sections, a penalty of one hundred per cent (100%) of the amount of the taxes and interest at six per cent (6%) per annum from the time the taxes should have been paid, shall be recovered. Said additional penalty and interest shall be paid into the state treasury. Provided that no action shall be commenced nor proceeding taken on behalf of the State or any county, city, town or taxing district to assess for taxation for any period any personal property described in this section required to be listed for taxation which was assessed for taxation as of September 1, 1917.

§ 6. That section 1 of chapter 65 of the Acts of the General Assembly of 1920, approved March 22, 1920, be and the same is hereby repealed.

§ 7. That section 1 of chapter 10 of the Acts of the Extraordinary Session of the General Assembly of 1917, as amended and re-enacted by section 1 of chapter 83 of the Acts of the General Assembly of 1920, approved March 23, 1920, be amended by repealing said section 1 of chapter 10 of the Acts of the Extraordinary Session of the General Assembly of 1917, and also by repealing section 1 of chapter

83 of the Acts of the General Assembly of 1920, and inserting in lieu thereof the following section, so that when said sections are amended by substituting and re-enacting the following section in lieu thereof, the same shall read as follows:

Section 1. All live stock and all domestic fowls shall be taxed for State purposes at the rate of fifty (50c) cents on each one hundred ($100.00) dollars of assessed value, and shall be exempt from taxation for all local purposes; provided, however, that twenty-five domestic fowls to each family shall be exempt from taxation for any purpose whatever.

§ 8. That section 1 of chapter 4 of the Acts of the Extraordinary Session of the General Assembly of 1917, approved May 2, 1917, be amended by repealing said section 1 of chapter 4 of the Acts of the Extraordinary Session of the General Assembly of 1917, and inserting in lieu thereof the following section, so that when said section is amended by substituting and re-enacting the following section in lieu thereof, the same shall read as follows:

Section 1. Tax on Bank Deposits. Every person, firm or corporation having, on the first day of July, a deposit in any bank, trust company, or combined bank and trust company, organized under the laws of this State, or in any national bank of this State, shall pay a tax to the State which is hereby assessed at the rate of one-tenth of one per cent annually, upon the amount of such deposit so held by such bank on the first day of July, and no deduction therefrom should be made on account of any indebtedness. The taxes imposed by this section shall be paid by such bank, trust company, or combined bank and trust company, or national bank, for and on behalf, and as the agent of the depositor therein to the auditor on or before the first day of September next following the date whereon the report provided for in section 9 of this act.

§ 9. That section 3 of chapter 4 of the Acts of the Extraordinary Session of the General Assembly of 1917,

approved May 2, 1917, be amended by repealing said section 3 of chapter 4 of the Acts of the Extraordinary Session of the General Assembly of 1917, and inserting in lieu thereof the following section, so that when said section is amended by substituting and re-enacting the following section in lieu thereof, the same shall be read as follows:

Section 3. Banks to Report and Pay Tax on Deposits. Each bank, trust company, or combined bank and trust company and national bank doing business in this State, shall file on or before the twenty-first day of July in each year, with the State Tax Commission, a report setting forth the total amount of its deposits as of July first of each year, which would be taxable in the name of the depositor, but excluding therefrom such deposits as are not taxable against the depositor under the laws of this State, and shall, on or before the first day of September of each year, pay to the auditor one-tenth of one per cent of the amount of such deposits, and may charge to and deduct from the deposit of each depositor the amount of the tax so paid for and on his behalf, and a lien as of July first of each year is hereby given to the banks and trust companies so paying the tax on the funds belonging to each depositor, respectively, on July first of each year on which the tax shall be so paid by them.

Any claim for taxes against the depositor charged to or otherwise asserted against him by the bank paying the taxes shall be so charged or asserted within six months after the payment of the taxes to the auditor, and all claims, demands or lien therefor shall be thereafter barred.

§ 10. In event a referendum is desired upon this act, then such referendum shall be conducted in all things in the manner provided in chapter 8 of the Acts of the Extraordinary Session of the General Assembly of 1917, approved May 2, 1917.

§11. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional, the decisions of the courts shall not affect or impair any of the

remaining provisions of this act. *It is hereby declared as a legislative intent that this act would have been adopted had such unconstitutional provisions not been included therein.*

§ 12. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

§ 13. Whereas, *the present State revenue and taxation laws impose an unequal burden of taxation upon real estate, and it is necessary for an immediate equalization of the distribution of the burden of taxation upon the various classes of property in this Commonwealth,* an emergency is declared to exist, and this act shall become a law and effective upon its passage and approval by the Governor.

Approved March 4, 1924.

**(Section 171, Kentucky Constitution, as originally written —in the 1915 Statutes.)**

"Section 171. *Levy and collection of by general laws—uniformity.* The General Assembly shall provide by law an annual tax, which, with other resources, shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year. Taxes shall be levied and collected for public purposes only. They shall be uniform upon all property subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws."

**(Section 171, Kentucky Constitution, as amended—and now in the 1930 Statutes.)**

"Section 171. *Levy and collection of taxes by general laws; public purposes only; uniform within the class and territory; classification of property; bonds of state and its divisions exempt; referendum of laws classifying property; provisions for.*—The general assembly shall provide by law an annual tax, which with other resources, shall be sufficient to defray the estimated expenses of the common-

wealth for each fiscal year. Taxes shall be levied and collected for public purposes only and shall be uniform upon all property of the same class subject to taxation within the territorial limits of the authority levying the tax; and all taxes shall be levied and collected by general laws.

"The general assembly shall have power to divide property into classes and to determine what class or classes of property shall be subject to local taxation. Bonds of the state and of counties, municipalities, taxing and school districts shall not be subject to taxation.

"Any law passed or enacted by the general assembly pursuant to the provisions of or under this amendment or amended section of the constitution, classifying property and providing a lower rate of taxation on personal property, tangible or intangible, than upon real estate, shall be subject to the referendum power of the people, which is hereby declared to exist to apply only to this section, or amended section. The referendum may be demanded by the people against one or more items, sections or parts of any act enacted pursuant to or under the power granted by this amendment, or amended section. The referendum petition shall be filed with the secretary of state not more than four months after the final adjournment of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people under this section. All elections on measures referred to the people under this act shall be at the regular general election, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become a law when approved by the majority of the votes cast thereon, and not otherwise. The whole number of votes cast for the candidates for governor at the regular election last preceding the filing of any petition shall be the basis upon which the legal voters necessary to sign such petition shall be counted. The power of the referendum shall be ordered by the legislative assembly at any time any acts

or bills are enacted, pursuant to the power granted under this section or amended section, prior to the year of one thousand nine hundred and seventeen. After that time, the power of the referendum may be ordered either by the petition signed by five per cent (5%) of the legal voters or by the legislative assembly at the time said acts or bills are enacted. The general assembly enacting the bill shall provide a way by which the act shall be submitted to the people. The filing of a referendum petition against one or more items, sections or parts of an act shall not delay the remainder of that act from becoming operative." (The foregoing section appears as amended by the act of March —, 1914, c. 94, p. 497, ratified by the people at the general election in November, 1915.—Ed.)